CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

GLORIA SCOTT AND *
DEANIA JACKSON, *
* NO. 96-8461
VERSUS * DIVISION "I"
* SECTION 14
THE AMERICAN TOBACCO *
COMPANY, INC., ET AL. *

Transcript of proceedings before the Honorable Richard J. Ganucheau, Judge Pro Tempore, Civil District Court, Parish of Orleans, State of Louisiana, 421 Loyola Avenue, New Orleans, Louisiana 70112, commencing on June 18, 2001.

* * * * *

Tuesday Afternoon Session
April 1, 2003
12:55 p.m.

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P R O C E E D I N G S
* * * * *

(In open court without a jury present:)

THE COURT:
Mr. Wittmann?

MR. WITTMANN:
Yes, Your Honor.
The Court has ruled that evidence regarding the effect of nicotine on Ms. Scott and Ms. Jackson or why they started or stopped smoking is not admissible in this phase of the trial.
The Court stated on Monday of this week and again today that the same ruling will apply to Dr. LeBlanc's testimony.
The Court refused to permit the plaintiffs to ask Ms. Scott if she had been diagnosed as addicted by her doctor, and we submit that the plaintiffs cannot

now be permitted to put on such individual evidence through Dr. LeBlanc under the guise that such proof is necessary to demonstrate typicality.

The plaintiffs' position contradicts their motion in limine which the Court has granted.

If these individual proofs are

relevant to typicality, as Mr. Herman mentioned yesterday afternoon, then the Court should not have precluded the defendants from cross-examining the class representatives on all of the individual issues regarding alleged addiction and why they started or stopped smoking.

Defendants would have used their cross-examination to demonstrate that the class representatives are not typical, and that unique individual circumstances do not prove anything for other class members.

Finally, Your Honor, typicality is not something the plaintiffs have the burden to prove at trial. The Court has already determined that the class representatives are typical and adequate to represent the class.

If they are not, the case should be decertified rather than having a typicality trial which violates the Court's ruling on the motion in limine and bars the defendants from cross-examining the plaintiffs on the same issues.

That's all I have, Your Honor.

MR. RUSS HERMAN:

We will repeat the same statement we made yesterday both in regards to the proffer and our opposition to the defense motion without the necessity of going through it in extenso.

Further, the Supreme Court and this Court have laid down the guidelines with regard to that issue, and we feel that we have to prove habit and addiction in order to meet the class definition because the defendants have moved several times for decertification.

THE COURT:

All right. This conference is over and I will summon the jury.

MR. BRUNO:

Your Honor, I just have one document which is by consent that we talked about.

MR. RUSS HERMAN:

We can do that later.

MR. BRUNO:

Okay. There is no objection to it.

THE COURT:

The jury is waiting.

If there is no objection, put it in. But the jury was summoned for 1:00, it's

past 1:00 now, and I would like to get them in here and get this testimony started.

MR. BRUNO:

Yes, Your Honor. That's fine.

THE COURT:

I'm going to do that, Mr. Herman, while the jury is on the way.

Well, we can't find the document.

I'm going to put my work clothes on. I will be right back.

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(In open court with a jury present at 1:05 p.m.:)

THE COURT:

Please be seated.

MR. RUSS HERMAN:

Your Honor, may I approach?

THE COURT:

Yes, Mr. Herman.

(At sidebar:)

MR. RUSS HERMAN:

I've just been advised that the witness recognized a juror who is from her church, and just reported it to me.

THE COURT:

The witness just recognized whom?

MR. RUSS HERMAN:

A juror who she says is from her church.

I did not make any -- I did not make any further inquiry. The person that we had sitting with the witness just reported that to me, and I thought I should report it to you right away.

THE COURT:

Which juror is it?

MR. RUSS HERMAN:

I don't know. I didn't make any inquiry. I didn't know how you wanted to handle this.

THE COURT:

Well, I think you better go find out, and we need to find out if she can be fair

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and impartial.

MR. WITTMANN:

That's right.

THE COURT:

She had all the names when we did the voir dire.

MR. RUSS HERMAN:

I know. I just didn't want to take the chance of not doing something. We will go find out now.

THE COURT:

Have your assistant find out from the witness who she recognizes, and she can give a number starting with -- do you have a jury diagram?

MR. CARTER:

I have a chart.

MR. RUSS HERMAN:

Why don't you do that, Ken?
MR. CARTER:
Okay.
MR. RUSS HERMAN:
I think it is better that a lawyer on our side do it than a nonlawyer so the record is clear.
MR. CARTER:
I will come back and report.
MR. RUSS HERMAN:
I'm sorry.
MR. WITTMANN:
Do you want us to wait here?
THE COURT:

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Yes. It should be just a second.

-- -- --

MR. CARTER:
I spoke to the witness, Your Honor. She recognized No. 18, St. Cyr, as being a member of her church.
She doesn't think that the juror saw her, but she thinks if she gets on the stand the juror will probably recognize her. She's from the same church, but she is not a personal friend.
She may know the family because she goes to the church.
THE COURT:
Well, No. 18 is an alternate. No. 18 is not going to decide anything. So I don't think any harm has been done, but I'm happy it's disclosed.
MR. WITTMANN:
The only question is I'm afraid if we don't voir dire her as to this matter once the witness takes the stand, the damage has been done.
So I think our choices are to voir dire her or excuse her.
THE COURT:
How do you feel?
MR. RUSS HERMAN:
I think it would not be good, no matter, for the jury as a whole to excuse her after she sat through all of this testimony.

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THE COURT:
I'm not talking about excusing her. I'm talking about voir diring her at this point and make a decision after that.
What's your response on that?
MR. RUSS HERMAN:
My response is that seems reasonable.
MR. WITTMANN:
Okay.
THE COURT:
I think the only way to do it is send the jury back to the jury meeting room, and then I will summon her and we will do this in chambers.
MR. RUSS HERMAN:

That's fine.
My only other suggestion is that you do the voir dire.
THE COURT:
Oh, yes.
And it's Mrs. --
MR. CARTER:
(Nods affirmatively.)
THE COURT:
That's the name.
MR. WITTMANN:
Yeah.
THE COURT:
All right.
(In open court:)
THE COURT:
An issue has arisen which requires

that you ladies and gentlemen of the jury go back to the jury meeting room. We hope to summon you back and start the testimony very soon.
But stay in the meeting room because I will send for you when we can start the testimony.
(In open court without a jury present:)
THE COURT:
I presume there are no witnesses or potential witnesses in the courtroom; is that correct?
All right. Mr. Carter, for the record, the person to whom you were referring when we had the last bench conference is Charlotte St. Cyr?
MR. CARTER:
That's correct, Your Honor.
THE COURT:
And she's the lady on the extreme right-hand side of the second jury box in the bottom row?
MR. CARTER:
Yes, Your Honor.
THE COURT:
All right. As I indicated, I will voir dire Ms. St. Cyr, and we will do it in chambers.
MR. WITTMANN:
Your Honor, I just noticed something in looking at my jury chart.

THE COURT:
She doesn't bear No. 18. I noticed that too.
MR. WITTMANN:
I understand that. But this lady disclosed to us during voir dire that Dr. LeBlanc was a member of her church. So we have apparently voir dired her on this issue already.
THE COURT:
All right. If it's a nonissue, it's a nonissue. If she disclosed it and she

was voir dired, she obviously indicated she could be fair and impartial. So it's a nonissue.

MR. WITTMANN:

I think it's a nonissue. No, I think it's a nonissue. I didn't realize it when I was at the bench until I came here --

THE COURT:

That's what I said, it's a nonissue.

MR. WITTMANN:

Yes, Your Honor. It's a nonissue.

MR. BRUNO:

Mr. Wittmann agrees with the Court.

THE COURT:

Okay.

MR. RUSS HERMAN:

Judge, what number do you have --

MR. BRUNO:

While we are killing time, we move for introduction of Exhibit 4350.

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MR. WITTMANN:

No objection. Or we stand on our written objections. Other than that, no further objection.

THE COURT:

What is your objection, Mr. Wittmann?

MR. WITTMANN:

Beats me. I think it was hearsay, 403, whatever.

But whatever it was, we stand on it and we have no further objection.

THE COURT:

Let me look at it. I understood there was no objection. But there is an objection.

MR. BRUNO:

Well, that's what was represented to us before.

THE COURT:

What is this?

MR. BRUNO:

That's the date the advertisement appeared in Time Magazine which is reported by the web site, the Pollay web site to which Mr. Williams has referred in the record already, just to confirm the date that it was published and where it was published.

THE COURT:

Well, if the date is objected to, it's got to come off.

MR. BRUNO:

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No. That's just for information. That's not part of it.

THE COURT:

I have a clean copy here.

MR. WITTMANN:

I have a clean copy too.

THE COURT:

This will be the one that's filed, the one that bears the number at the

bottom right.
Objection overruled, it will be
received in evidence.
(In open court with a jury present:)
THE COURT:
Please be seated. The next witness
for the plaintiff, please.
MR. CATES:
We call Dr. Doris LeBlanc to the
stand, Your Honor.
Good afternoon, Your Honor.
THE COURT:
Good afternoon.
MR. CATES:
Good afternoon, ladies and gentlemen.
-- -- --
DORIS E. LeBLANC, M.D.
being first duly sworn by the Clerk, testifies and
says as follows:
-- -- --
DIRECT EXAMINATION
BY MR. CATES:
Q. Dr. LeBlanc, good afternoon.

A. Good afternoon.
Q. Dr. LeBlanc, would you state your full name
and address for the record, please?
A. Doris Elizabeth LeBlanc, my address is
[DELETED].
Q. Dr. LeBlanc, you are a medical doctor;
correct?
A. Yes, I am.
Q. A practicing physician?
A. A practicing physician.
Q. Dr. LeBlanc, in what area do you practice?
A. I am a physician licensed to practice general
psychiatry in the state of Louisiana.
Q. Do you practice clinical psychiatry?
A. I am considered a clinical psychiatrist, yes.
Q. And could you explain that term, clinical
psychiatry, and how that works for the members of
the jury, please?
A. Well, in terms of psychiatry, it's a
specialty in medicine that allows you to learn and
understand and treat various disorders as it relates
to development, emotions, behavior.
In terms of clinical psychiatry, I am
considered a trench worker. I work with patients,
direct contact with patients.
I evaluate patients, I assess and diagnose
patients, and I ultimately treat patients.
Q. And Doctor, how long have you practiced in
the area of clinical psychiatry?
A. I was licensed in 1984 in the state of
Louisiana, and I have been practicing ever since.
Q. So is that 19 --

A. About 19 years.
Q. Were you born and raised here in New Orleans?
A. Born and raised in New Orleans.
Q. Doctor, if you would, would you go through
your educational background for the record and for
the members of the jury?

And if you would, I want you to state what degrees you obtained and, as best you recall, when and where you got those degrees from?
A. Well, I'm a product of both the public and private school system here in New Orleans.
I graduated and went on to an undergraduate program outside of Chicago, Illinois, graduating from Barrett College in premed.
Returned to New Orleans, and did medical school education at Tulane Medical Center. Finished the program and did a five-year psychiatric residency at Tulane, Charity Hospital system.
Q. How long did that take?
A. In terms of undergrad, medical school?
Q. Yes.
A. Thirteen years.
Q. And Doctor, you are licensed by the Louisiana State Medical Board?
A. Yes, I am.
Q. Now, Doctor, you are also board eligible; correct?
A. I'm considered board eligible, yes.
Q. What does that mean?
A. That means that at any point I choose to get board certification, I can go ahead and apply and take the examination.

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Board certification is generally a degree that you can earn that says that you have been able to pass a test on a certain level of knowing psychiatry.
But as a clinical psychiatrist, I have never really been motivated to do that, and so I have remained board eligible just in case I change my mind.
Q. So Doctor, in order to practice clinical psychiatry in the state of Louisiana, it's not necessary that you are board certified?
A. No, it is not.
Q. And you have been practicing right here in Louisiana for almost twenty years?
A. For 19 years, yes.
Q. Dr. LeBlanc, during the course of the last 19 years, have you done lectures or given speeches on topics involving adolescence and child psychiatry as well as psychiatry of the elderly?
A. Early on in my career, I did do a lot of lecturing for private concerns, for the medical centers where I was working, and for some of the universities. I even did a lecture series for Tulane.
Over the years my interests have changed and I've not done any recent lectures. Now I pretty much lecture to my patients in terms of disease process and treatment.
Q. Now, Doctor, if you would share with the jury your professional employment over the last 19 years, giving each position and what each involved, if you would as best you can recall? That's a long time

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and I understand that.
A. Let's see. In my last year of my psychiatric residency, I worked at the Chartres Mental Health

Clinic in New Orleans. I was offered a staff position there, and stayed there two years until I was offered a staff position at the Methodist Psychiatric Pavilion in New Orleans.

I came on board there roughly 1986 as a staff or clinical psychiatrist. I stayed there about two and a half years until I was offered a similar position at East Lake Hospital, also in New Orleans, Louisiana.

At the same time I was starting my forensic psychiatry work, and I was hired by the coroner's office to do competency evaluations and commitments for the Parish of Orleans.

While at East Lake, I went from clinical director -- I'm sorry, from a clinical psychiatrist to director of the outpatient services to medical director.

After about three years, I left there and went to East Louisiana State Hospital, and worked as a clinical psychiatrist and some administrative duties.

Q. Where is that hospital?

A. That is in Jackson, Louisiana, north, I would imagine, of Baton Rouge.

At the same time, I was offered a position in the Lafayette area with a psychiatric hospital. I began doing clinical psychiatry there, and eventually began doing some administrative work as well.

And I left there, and all the time I was still doing forensic psychiatry and I had a private practice in New Orleans, which was going fairly well.

There was a time where I did some locum tenens work, which meant I left the state and went to do clinical psychiatry in Colorado. I did that for about three months, got a taste for that, in case I wanted to retire and continue to do that.

Came back, and this is now about 1995, 1996. Continued to do private practice, forensic psychiatry.

And then I began a series of assignments at outpatient substance abuse programs around the state, one of which was in Morgan City, Louisiana, one was in La Place, and one was in Breaux Bridge, and one was in Alexandria. So I became medical director of those programs.

And to date, I am medical director of the outpatient substance abuse program in La Place and I'm also the consulting medical director for the program in Alexandria.

Q. Now, Doctor, throughout the nineteen, almost twenty years, have you belonged to any professional organizations?

A. Early on I joined almost all the organizations, the APA, the AMA, the Orleans Parish Medical Society.

As I began to look at retiring, I dropped some of my associations, but I maintained the ones that I had to maintain in order to practice. And that's with the Louisiana State Board of Medical

Examiners and also with Forensic Experts and also with the Association of Substance Addiction Medicine.
Q. Now, you mentioned, Doctor, that you have always maintained a private practice --
A. Yes, to this date.
Q. -- in addition to the other positions you just described?
A. Yes.
Q. Throughout that 19-year private practice, did you treat persons with addictive disorders?
A. Yes.
Q. Did you treat children or adolescents as well as adults for addictive disorders?
A. My practice included children, adolescents and adults for diagnosis and treatment.
Q. Doctor, 19 years is a long time, but during that time period, would you say that you have treated as many young people, say, adolescents, as adults?
A. I would say even considering now, probably half and half, adolescent and children versus adults.
Q. And you mentioned earlier, Dr. LeBlanc, that your primary practice has always been clinical. That means you actually see and treat patients; is that correct?
A. I'm a clinical psychiatrist. It hasn't always been purely clinical psychiatry. I have done some administrative work as well, but primarily I'm a clinical psychiatrist.
Q. I see. Doctor, in that private practice, if

you would, could you describe it for the members of the jury in terms of the kinds of patients that you have seen, the volume of patients that you have seen, as well as the locations that private practice has been in?
A. Well, in -- let's start with Morgan City. The program there averaged about 75 adult, children and adolescent patients. That was outpatient. It was diagnosis and treatment of substance abuse on an outpatient basis.
Q. Is that 75 a week, a month?
A. That was the total number of the case load.
Q. That you managed?
A. So at times I would see someone once a week, once a month, some people every day depending on the needs.
But that was the total population, patient population in that facility.
Q. I see.
A. We eventually branched out to do Kid-Med in that same area with focus on addiction to do some preventive work in children.
Q. What was Kid-Med?
A. That is a federal/state program that allows for screening children for the detection and prevention of illnesses in the state of Louisiana.
So we use that as an opportunity to do substance abuse intervention and prevention in that population. And I would imagine at one time we may have had maybe 50 to 75 children at one point.

Q. I see.
A. In Breaux Bridge, that is an outpatient

substance abuse program that deals with addiction. And while there, the case load, the patient population was anywhere from 175 to 200 patients that I was responsible for, once diagnosed, directly responsible for the treatment.

In Alexandria -- currently I'm involved with La Place which has a patient population of about 380, 380 patients. And then I'm a consultant for the program in Alexandria which has roughly 200 patients.

Q. And that's today?
A. That's ongoing, yes.
Q. My math is not too good, but approximately how many patients are you responsible for in connection with your private practice today?
A. At this point?
Q. Yes, ma'am.
A. About 680, 680 people.
Q. Doctor, is it fair to state that the majority of these patients you have seen over the years have had addictive disorders?
A. I'm sorry 580, 580 people.
Q. 580?
A. I'm sorry?
Q. Is it fair to state that the majority of these patients that you have seen over the years have had addictive disorders?
A. That's their primary diagnosis. That's the primary reason that led them into the health system where I was working and the primary reason that they were maintained in the program in order to treat.
Q. Were any of them also addicted to nicotine,

Doctor?
A. The vast majority are.
Q. So Doctor, is it fair to state that over the last 19 years, you have seen patients throughout the state of Louisiana?
A. Oh, yes. I have worked across the state.
Q. And what percentage of those patients, if you can, would you think were cigarette smokers?
A. Were cigarette smokers?
Q. Yes, ma'am.
A. Oh, my goodness. I would say probably well less than 10 percent were not -- well, now, we are talking about the adults; okay?

In the adult population, less than 10 percent were not smokers.

In terms of the adolescent population, probably 60, 70 percent were smokers in the adolescent population.

In the children population, that would be difficult for me to put a percent on. But in that population, particularly in Morgan City, we did identify children under the age of twelve who smoked.

Q. So you have treated, is it correct, children, adolescents, as well as adults who were cigarette smokers?
A. Yes, that's correct.

Q. Are many of them addicted to nicotine?
A. Now, what percentage of the smokers were actually addicted to nicotine?
MR. WITTMANN:
Objection, Your Honor. May we

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approach?
THE COURT:
Yes.
(At sidebar:)
MR. WITTMANN:
Your Honor, we were precluded from going into the effects of nicotine on the individual class representatives, and now Mr. Cates is going into the effects of nicotine on individuals in Morgan City. That has no relationship to this case.
THE COURT:
She's going to be limited to class-wide issues, and the effects of nicotine class-wide are issues in the case. It wasn't an individualized question, as I understood it.
MR. CATES:
It was not intended to be, Your Honor.
MR. WITTMANN:
It seems to me that he's going into the fact that there are individuals in Morgan City who she says are addicted to nicotine, but we weren't allowed to ask those questions to Ms. Scott or Ms. Jackson. The effects of nicotine were barred from cross-examination.
MR. CATES:
We didn't ask the same question of Ms. Scott and Ms. Jackson, Your Honor. That's an individual question.

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THE COURT:
The objection is overruled.
MR. CATES:
Thank you, Judge.
(In open court:)
THE COURT:
The objection is overruled. Answer the question, if you are able to, please.
THE WITNESS:
Would you repeat that question, please?
MR. CATES:
Could you read back the question, please.
(The record is read by the Reporter as follows:
Q. So you have treated, is it correct, children, adolescents, as well as adults who were cigarette smokers?
A. Yes, that's correct.
Q. Are many of them addicted to nicotine?
A. Now, what percentage of the smokers were actually addicted to

nicotine?)
A. In my clinical training and experience, based upon that, I would say of the adults that smoked cigarettes, easily -- truly, the vast majority, but easily 75 to 80 percent were addicted.
And that's based upon talking to the patients and basically saying to me I have this problem, I want to stop smoking, I can't, I have tried, I need

some help, and knowing the definition of nicotine addiction. So I use that criteria to come up with those figures.
In terms of the adolescents, I would say probably a higher percentage than that of the adolescents who smoke and came into the treatment programs where I worked, easily more than 80 percent. You just did not see adolescents who were smoking that were just doing it and could stop.
Once again, it would be very difficult for me to say about children, so I really couldn't give you a figure about the children.
Q. Thank you, Doctor.
Doctor, had a number of, from your experience in terms of histories and communicating with your patients throughout the state, had a number of them been smoking since the '50s or the '60s or the '70s?
MR. WITTMANN:
Objection, Your Honor. May we approach?
THE COURT:
You may approach.
(At sidebar:)
MR. WITTMANN:
Your Honor, this is not in her expert's report at all, and she's going well beyond the expert's report at this point.
THE COURT:
It's still on her qualifications.
MR. CATES:
I haven't tendered her yet.

MR. WITTMANN:
That's my second objection. You are asking her substantive expert testimony.
THE COURT:
I don't think it's an appropriate question at this stage of the proceedings. I'm going to instruct her not to answer it.
(In open court:)
THE COURT:
The objection is sustained. Don't answer the question.
Next question, please?
BY MR. CATES:
Q. Now, Doctor, is it correct to state that you treat addiction on a regular basis, a daily basis in connection with your clinical practice?
A. I treat addiction on a daily basis, yes, sir.
Q. Doctor, you have been qualified and have testified in state and federal court as an expert in clinical psychiatry before?

A. Yes, I have.
Q. About how many times, Dr. LeBlanc?
A. Going back to the forensic work that I did for the coroner's office as well as private practice, well over -- now, the question is -- would you repeat the question?
Q. Doctor, have you been qualified and testified in state and federal court as an expert in clinical psychiatry before?
A. I have been qualified and/or testified at least a hundred times as it relates to psychiatry,

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forensic psychiatry in the state of Louisiana.
Q. Thank you, Doctor.
Doctor, have you ever been denied qualification as an expert before?
A. No, I haven't.
Q. Doctor, have you ever testified against the tobacco industry in any other cases?
A. No, I haven't.
Q. Dr. LeBlanc, have you been retained by any tobacco companies in connection with any other cases?
A. Yes, I have.
While I was clinical psychiatrist at Methodist Psychiatric Pavilion, probably 1988, '89, maybe early 1990, I was approached by a local physician who asked me if I would be interested in doing some legal work.
And he said, I know you do that, and would you be interested. And he said it's a fairly big case.
So I said, Yeah, I'm interested and I have the time.
So he introduced me to a contact person. And eventually by going out to San Francisco and then coming back to New Orleans, I was --
Q. Who flew you to San Francisco, Dr. LeBlanc?
A. An attorney that worked for a tobacco company that wanted me to meet an attorney in San Francisco to see if I would be appropriate, for lack of a better term, to be a witness for a tobacco company in up and coming litigation. That was my understanding.

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Q. So Doctor, was your understanding they were hiring you as an expert?
A. That was my understanding.
And so having gone to San Francisco and met with that attorney, I came back to New Orleans and was told that they were going to hire me.
And at that point I began an association with a law firm in North Carolina that was associated with a law firm here in New Orleans, and I was asked to look at articles, research, that was being done at the time, that had been done as well, and to put together a picture of cigarette smoking as it related to it being a habit.
And the understanding was that I would eventually be used to testify in court as to cigarette smoking being a habit.
Q. And Doctor, did you review those articles that you were asked to review or study?

A. Over the course of a couple years, I reviewed many, many articles.
Initially the articles were sent to me, and the attorney would ask me to review the articles, and then I would meet with the law firm here in New Orleans and I would discuss -- I would sort of read and digest and give them my expert opinion about the articles and how it related to cigarette smoking being a habit.
I would say months after this -- maybe six, eight, ten months after this, I began to find articles that talked about cigarette smoking other than being a habit, sort of on a continuum, and I began to do my own research at that point.

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Q. So Doctor, you didn't just read what they sent you to read, did you?
A. Initially I read the articles that were sent to me, but like I said, over --
MR. SHOLES:
Objection, relevance.
THE COURT:
Overruled. Answer the question, if you are able to.
MR. SHOLES:
Your Honor, may we approach, please?
THE COURT:
You may approach.
(At sidebar:)
MR. SHOLES:
Judge, this is going way beyond the bounds of qualifications of an expert. Now she's talking about facts unrelated to her qualifications.
MR. CATES:
It's been asked and answered, and I'm still trying to establish that --
THE COURT:
The objection is overruled. Next question, please.
MR. CATES:
Thank you, Your Honor.
(In open court:)
BY MR. CATES:
Q. I think the last question, Doctor, you weren't just reading what you were given?
A. I can answer the question?

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Q. Yes, ma'am.
A. No. Like I said, over like a six- or eight-month period of time, I was very interested in what I was reading and began to see some other opinions surface on a fairly regular basis about cigarette smoking and nicotine being not a habit, but words that catch my memory are abuse and dependency.
And then at that point, actually the word addiction started surfacing in some of the research I was doing on my own.
And I began to share that with the tobacco company that hired me.
Q. And Doctor, is it your testimony that as a clinical psychiatrist of almost twenty years, if you are going to address an issue, you need to know both

sides of that issue, don't you?
A. Well, yes. That's what medical training is all about, the investigation of situations that are not healthy.
You investigate what a patient tells you, you investigate it so you can understand what is going on, and you investigate it so you can eventually treat it.
And so, yeah, I was interested in finding out exactly what cigarette smoking was all about, and I shared that with the tobacco company.
Q. And what happened after that?
A. Well, sort of the response that I got from the attorney that I was working with primarily was, Yeah, yeah, but, you know, continue to look at the articles that I'm sending you, and I want you to highlight -- and I'm paraphrasing -- but I want you

to just highlight primarily the articles, and these are the areas that we want you to look at and digest and get back to us.
And that went on for I guess over a year, until a situation happened that really was sort of the beginning of the end of my relationship with this lawyer and the tobacco company.
Q. Doctor, that situation you referred to, did that involve the tobacco companies retaining you about testifying in a case?
A. The answer to that is yes.
The situation was -- at this point I was at East Lake, so we are looking at probably, '91, 1992, and I was told by the attorney that there was a big case coming up, the Horton case, in Mississippi. And they knew what I was doing in terms of the research, and so they asked me if I would meet with the lawyers out of Mississippi and pretty much provide to them the same sort of services in terms of my understanding of what cigarette smoking was all about.
And so I met with the lawyers one afternoon. And in the course of the meeting, they basically told me -- and this is what was said directly to me -- we are not really interested --
MR. SHOLES:
Objection, hearsay.
MR. WITTMANN:
Hearsay.
THE COURT:
Sustained. You are not allowed to repeat what someone who is not in the

courtroom told you.
If you can answer the question without doing that, you may do so.
Otherwise don't answer the question.
THE WITNESS:
Okay.
BY MR. CATES:
Q. Dr. LeBlanc, what was your understanding about the course of events that you described as the beginning of the end?
A. It's my understanding that I would pretty much be given a script in terms of what they wanted

me to say, and that is when we had a parting of the ways. There was a disagreement.

And I said it to the lawyers from Mississippi, but I also got in contact with the lawyer that I had been dealing with primarily and shared with him what happened, and that I was really uncomfortable and I got a sense that things did not go well in that meeting.

And he said that he would get back with me.

Well, some time passed, and I noticed that the articles weren't coming from the company, and I didn't have any further contact with the local law firm.

And so I eventually called the North Carolina attorney and pretty much asked him what was going on.

And he basically said, Well, you know --

MR. WITTMANN:

Objection, Your Honor.

MR. SHOLES:

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Objection, Your Honor.

THE WITNESS:

It's my understanding, it's my understanding that --

MR. LONG:

May we approach?

THE COURT:

Just a moment, please. You are not allowed to repeat what someone who is not in the courtroom told you.

If you are able to answer the question without doing that, you may do so.

But don't do it yet. The lawyers want to approach the bench.

Approach the bench, please.

(At sidebar:)

MR. LONG:

We object to this line of questioning, Your Honor.

What happened after she was retained by a tobacco company is nothing but character assassination. It doesn't go to any qualifications at all.

THE COURT:

It's marginally relevant, Mr. Cates, and I will let you put your comment on the record.

But you have been at this for about 40 minutes now, and I just wonder how much longer is it going to go? And it's getting off the point of qualifications.

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History is okay, but I think Mr. Long has a point.

MR. CATES:

We understand.

MR. LONG:

One point, it's marginally relevant. But the 403 concerns where we can't get anybody here to refute what she's saying --

MR. CATES:
We went through this with Arnett and several other experts.
MR. LONG:
And that doesn't make it right.
MR. WITTMANN:
And it's not in her expert's report.
MR. CATES:
We are going to tender her now, Judge.
THE COURT:
Please do. Next question, please.
(In open court:)
MR. CATES:
Thank you, Your Honor.
At this time we would like to tender Dr. Doris LeBlanc as an expert in clinical psychiatry with an emphasis on addiction in adults, children and adolescents.
THE COURT:
Cross-examination on qualifications?
MR. WITTMANN:
Yes, Your Honor.

-- -- --

VOIR DIRE EXAMINATION

BY MR. WITTMANN:

Q. Good afternoon, Dr. LeBlanc.

A. Good afternoon.

Q. I'm Phil Wittmann, and I represent R. J. Reynolds Tobacco Company.
And you and I have met before, have we not?

A. Yes, sir.

Q. During the course of my taking your deposition?

A. Yes.

Q. Doctor, after you completed your residency in psychiatry, as I understand it, you became a general psychiatrist; is that right?

A. I was licensed to practice general psychiatry in the state, yes.

Q. And as you told us, you are not board certified in psychiatry, are you?

A. I have never taken the examination to be board certified, no, sir.

Q. You said you were board eligible. To be board eligible, you basically just have to finish medical school, get a degree in psychiatry?

A. My understanding is that you have to not only have completed medical school education and a residency program, but you have to have remained licensed by the state and also meet certain continuing education criteria.

Q. So anyone who is licensed by the state in general psychiatry is eligible to take the board certification examination?

A. I'm really not sure about that. You probably have to ask the people that do the board certifications. I just know as it relates to me.

Q. As it relates to you, you have never taken the board certification examination; correct?

A. No. There is a process that you have to

undergo, and I have never done that.
Q. Are you board certified in any other fields of medicine, Doctor?
A. No, I am not.
Q. Doctor, I was trying to follow your current positions, if you will.
A. Okay.
Q. Are you still employed as a staff psychiatrist at Choices of Louisiana?
A. Yes, I'm medical director of Choices of Louisiana both -- well, in La Place and as a consultant for the program in Alexandria.
Q. And is that a privately owned and operated outpatient Methadone maintenance clinic?
A. That's a privately owned outpatient Methadone maintenance program, yes.
Q. And what substance do you treat patients with Methadone for?
A. Well, primarily Methadone is used for the treatment of opiate addiction.
But what we found in our clinical experience -- and it bears out in research -- is that when you use Methadone to treat opiate addiction, you get the benefit of decreased cravings for other substances as well.
Q. Do you treat cigarette smoking with

Methadone, Doctor?
A. I do treat cigarette smokers in the context of Choices of Louisiana, but not primarily with Methadone, no.
Q. Well, that was my question. My question is you don't take a person who is a smoker and say, Come in and have some Methadone, do you?
A. No, but what I do is when my patients come in with a presenting problem with opiate addiction and during the course of years I have been there discussed with me their nicotine addiction, then I make appropriate treatment recommendations for that.
Q. But that treatment is for opiate addiction, not for nicotine; correct?
A. No. The treatment recommendations are specific for nicotine addiction. We talk about medications and pharmacology that is used, that can be used to treat their nicotine addiction, such as the Zyban or the gum or the patch, sometimes in combinations.
We talk about just knowing about addiction, we talk about counseling, and we talk about any medical problems that --
Q. I didn't ask what you talked about. My question -- maybe I wasn't clear. But someone that comes into your office --
MR. CATES:
Objection. Can he let her finish her answer, Your Honor, before he cuts her off?
THE COURT:
Overruled. Next question, please,

Mr. Wittmann?
BY MR. WITTMANN:
Q. My question is someone who is simply a

cigarette smoker, you don't prescribe Methadone for that person, do you?

MR. CATES:

Objection. It's been asked and answered, Your Honor.

THE COURT:

Overruled. Answer the question, if you are able to.

A. I believe you asked me if I treated --

Q. That wasn't my question, Doctor?

MR. WITTMANN:

Move to strike, Your Honor.

THE COURT:

The motion to strike is granted.

Answer the question, which is as follows: My question is someone who is simply a cigarette smoker, you don't prescribe Methadone for that person, do you?

A. No, I don't prescribe Methadone to treat their nicotine addiction. No, I don't.

Q. Thank you, Doctor.

Now, about how much time do you spend at that job, Dr. LeBlanc?

A. At the job at Choices of Louisiana in La Place?

Q. Yes.

A. I'm there Monday and Friday from 5:00 a.m. until about 11:00 a.m., 12:00 p.m.

Tuesdays and Wednesdays I'm there from 7:00 a.m. to about 11:00 a.m., 12:00 p.m.

And Thursdays I may come in for a couple of hours. But I'm also on call twenty-four hours seven days a week.

Q. So adding it up, how many hours a week are you involved with Choices of Louisiana in La Place?

A. Maybe roughly 25 hours a week. That's actual time, not -- that's not including the calls that I have to take.

Q. I understand.

Now, you also mentioned that there was a facility in Morgan City that you were involved with?

A. Yes.

Q. Is that the same type clinic, a Methadone clinic?

A. No, sir. That was a general outpatient substance abuse program that treated many different addictions.

Q. Okay. And what is the name of that clinic?

A. That was East Coast Family Services. That was the parent program, and from that came the behavioral clinic and the Kid-Med program.

Q. Are you still involved with that clinic in Morgan City?

A. The last time I was there was about maybe three months ago to do some administrative work for them. I have not had any contact with them since.

Q. Okay. So you are not currently working there at all?

A. Not at the present.

Q. But again, that was an outpatient substance

abuse program?
A. Yes, sir.
Q. And the substance that they were abusing or the patients were abusing was what?
A. There is many different substances. There was alcohol, there was nicotine, there was cocaine. Those were probably the big three. And towards the end of my stay there, there were opiates.
Q. Were you treating patients who did not have a substance abuse problem involving hard drugs such as cocaine and alcohol?
A. Not through East Coast Family Services, no.
Q. Now, were you also involved with another facility in Baton Rouge?
A. We haven't talked about that. I was associated with the Casey Family Services program, evaluating children and families that were going to be placed in adoption-type situations.
But that was not associated with substance abuse. That's the only program affiliation I have had in Baton Rouge.
Q. Now, you mentioned Tulane University and having lectured there. You never actually taught on the faculty of Tulane University, have you?
A. I maintained an associate professorship there I would say over about three or four years. And the last time, maybe about five years ago I did not reapply for it.
Q. It doesn't involve any actual work on your part; right?
A. It did, but I don't do that anymore.
Q. Okay. What do you consider, Doctor, to be

your primary job?
A. I am a physician, that I practice general psychiatry with a specialty in substance abuse and addiction.
Q. And if my math is right, you are spending about half of your time in New Orleans and the other half in these other positions outside of the city?
A. Well, you really haven't talked to me about what I do in New Orleans. But I would say --
Q. I was about to ask you.
A. Okay. I spend about 25 hours actual time in the clinic in La Place, and then I'm on call 24-7. That's my actual clinical time in La Place.
Q. Okay.
A. And I'm on 24-7 call for the clinic in Alexandria.
Q. And I didn't ask you, I don't think, how many hours a week you were spending in Alexandria?
A. That's on an as-needed basis. I generally do the consulting over the telephone, and we meet once a month with the staff for about three to four hours.
Q. So that's less time consuming than the work you do in La Place?
A. Well, when you are responsible for two hundred patients, you know, that doesn't equate to minutes and hours. You basically have a responsibility for patients. Whether it takes you a minute a month or ten hours a month, you are basically responsible for them.

Q. Just tell me how many time you are spending in Alexandria and the work related to Alexandria as

compared to your other locations?
A. They are both 24-7 that I have to be available for call.
Q. I understand. I'm talking about actual work time, Doctor.
A. You mean actually how many times they call me specifically from Alexandria?
Q. How much time are you spending working in Alexandria? That's what I'm asking you.
A. Once again, I am going to say I have to be available 24-7 for the clinic in Alexandria. How much of that is in actual time spent depends on how often they call me. It's a minimum of three to four hours a month.
Q. Okay, fair enough. About an hour a week?
A. I don't want to throw anybody off. As needed. I'm going to leave it like that. That's the best I can answer you.
Q. Now, let's talk about New Orleans a minute. Your work in New Orleans is primarily related to forensic work in which you are testifying in court working with lawyers; correct?
A. No, sir. I do about anywhere from fifty to eighty hours a month for the Social Security Disability office in Metairie, Louisiana.
Q. Fifty to eighty hours a month?
A. Yes, sir.
Q. And that work relates to Social Security claims that have been filed?
A. I do medical consulting work. I look at patient claims for validity of allegations, medical evidence. I have to investigate is there enough

medical evidence to support their allegations, and I have to make recommendations as to whether or not they meet the criteria for disability.
Q. Would I be correct, Doctor, that your time in New Orleans is split about 50/50 between testifying and treating private patients?
A. Oh, no. I don't do nearly the amount of forensic psychiatry that I used to do, not at all.
Q. Do you recall -- you did recall I took your deposition; correct?
A. Is that a question?
Q. Yes.
A. Did I recall what?
Q. That I took your deposition?
A. Oh, yeah.
Q. In the year 2000?
A. Uh-huh.

MR. WITTMANN:
Your Honor, may I approach the witness with a copy of the deposition?

THE COURT:
You may.

BY MR. WITTMANN:
Q. Doctor, I'm going to hand you copies of your deposition, both the one in 2000 and and the one in 2001, so if you can follow along with me. You might hang on to them, if you don't mind.

And if you would, Doctor, please, turn to page 29 of your deposition of November 3rd, 2000?
A. Page -- I'm sorry, would you repeat the page?
Q. Page 29.
I asked the question at line 15:

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And your work in New Orleans is primarily related to forensic work in which you are testifying in court?
The answer was: I would say 50/50. I also have private patients that I treat.
Do you recall having been asked that question and giving that answer?
A. That was in the year 2000. I was not doing the disability work then.
So about two and a half years ago I was doing much more forensic work, yes.
Q. So the question I asked you as to half your time spent testifying and half treating private patients is true in the year 2000; correct?
A. Well, not really testifying. Most of the time the lawyers try to not go to court, so I did a lot of preparation work in order to testify.
But oftentimes the cases were solved or resolved before I actually testified.
Q. But the question and answer I just read you said testifying; correct?
A. Yes. But that was my understanding of the question when you asked it back in 2000.
Q. All right. Now, I take it, to be fair, you have a significant amount of time and experience testifying in court; correct?
A. And preparing to testify, yes.
Q. And you have testified in court as a professional witness between 100 and 150 times?
A. About a hundred times at least, yes.
Q. And in addition to that, you have testified

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in deposition 30 or 40 times?
A. That sounds right.
Q. So you are not a stranger to the judicial process at all, are you?
A. No.
Q. Now, Doctor, let me ask you some questions about your work outside the courtroom.
Is it true that you have never published an article in any type of peer reviewed professional journal?
A. That is correct.
Q. And you have never published an article in a professional journal of psychiatry?
A. That is correct.
Q. Or in any other field for that matter?
A. That is correct.
Q. And you have never published an article in a professional peer reviewed journal on the topic of addiction, have you?
A. That is correct.
Q. And you have never published an article in a professional peer reviewed journal on the topic of nicotine dependence, have you?
A. That is correct.

Q. And finally, you have never published an article in a professional peer reviewed journal on the topic of smoking cessation; is that correct?
A. That is correct.
Q. And Doctor, in fact, you are not an expert in smoking cessation, are you?
A. I am considered an expert in smoking cessation, yes, sir. When I was hired by the

tobacco company ten, twelve years ago, that was my understanding.
Q. Well, you didn't testify in that case, did you?
A. No, I pretty much was asked not to.
Q. My question was you didn't testify in that case, did you?
A. It was my understanding that I was asked not to testify --
Q. I didn't ask for your understanding. I asked you a simple question. You didn't testify in that case?
A. No, I did not testify in that case.
Q. And in that case -- which was in Mississippi, as I understand it?
A. That was one of the cases, yes.
Q. All right. In that case, you weren't qualified as an expert by any court, were you?
A. I wasn't -- I wasn't asked to be qualified as an expert.
Q. Okay. And again, Doctor, I will ask you, do you consider yourself to be an expert in smoking cessation?
A. Yes, I do.
Well, I consider myself to be an expert in the treatment of nicotine addiction. Yes.
Q. Well, again, Doctor, if I could ask you to look at that same deposition I handed you a moment ago and ask you to look at page 164, the question was: Do you consider yourself to be an expert in smoking cessation?
Do you see that?

A. And that's page 64?
Q. No. I'm sorry, page 164?
A. 164, uh-huh.
Q. Toward the bottom of the page, the question was asked, I asked you: Do you consider yourself to be an expert in smoking cessation?
A. Uh-huh.
Q. And your answer was: I consider myself as being a trained professional who can make or can certainly make the referral to a cessation program. No, I don't do cessation programs myself.
Do you recall having been asked that question and giving that answer?
A. Yeah. I don't see that being in conflict with what I just responded.
Q. I didn't ask you that.
A. Yes, I'm reading that here.
Q. Thank you.
Now, in fact, Doctor, you admit that you only feel qualified to make a referral to a smoking cessation program; correct?

A. I do that on an ongoing basis now, yes.
Q. Okay. And what that means is someone you see who is a smoker, you say go get a cessation program; right?
A. No. That's not all what I say, not at all.
Q. That's all you do in terms of smoking cessation is refer them to a program; right?
A. No, sir. That's not true.
Q. Okay.
A. I do other things in terms of treating nicotine addiction.

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Q. Well, Doctor, in this case you didn't even tell either of the class representatives the name of a specific program, did you?
THE WITNESS:
Your Honor, am I supposed to be discussing the individuals?
THE COURT:
Answer the question unless there is an objection or I instruct you not to answer it.
THE WITNESS:
All right.
MR. CATES:
Objection, Your Honor. I think that goes to individual issues.
THE COURT:
Well, we know Mr. Cates is listening.
MR. WITTMANN:
Mr. Cates is quick, Your Honor, I will grant him that.
THE COURT:
If that's an objection, it's overruled. Answer the question.
THE WITNESS:
Would you repeat that question?
MR. WITTMANN:
Yes, Doctor. In fact, I will ask the Court Reporter to be so kind as to repeat it so I get it exactly right.
(The record is read by the Reporter as follows:
Q. Well, Doctor, in this case you

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didn't even tell either of the class representatives the name of a specific program, did you?)
A. A specific program, no. I did not give them the name of a specific program.
Q. In fact, before your involvement in this case, Doctor, you didn't even know that smoking cessation programs existed in the state of Louisiana, did you?
A. Not on a formal basis. But was -- now retrospectively I realize I was doing smoking cessation programs in an informal way. But formal programs, no, I wasn't aware of them.
Q. Okay. So to be clear on that, before your involvement in this case, you didn't know that smoking cessation programs existed in the state of Louisiana, did you?
A. That's true.

Q. Okay. So it would be fair to say then, wouldn't it, that the only two people you ever referred to a smoking cessation program are the class representatives in this case?
A. In terms of referring?
In the past what I would say to the patient that I was working with and treating was: You need to stop smoking. There are various modalities you can use to do that. We would discuss that.
Q. I didn't ask what you told your patients.
I asked if these were the only two people that you ever referred to a smoking cessation program?
A. But that's not true. A formal cessation

program, I give you that. But a smoking cessation program informally, no. I referred people to that countless times.
Q. I will stick to formal. You never referred anybody prior to your involvement in this case to a smoking cessation program?
A. To a formal --
Q. A formal smoking cessation program?
A. No, not to a formal. But I did refer patients to smoking cessation programs.
Q. Okay. And you, of course, don't do cessation programs yourself?
A. Oh, yes, I do.
Q. You do formal cessation programs?
A. I don't do formal, but I certainly do -- I certainly treat nicotine addiction through cessation.
Q. But you don't do any formal cessation programs --
A. I'm not part of a formal program. No, I am not.
Q. And you are not an expert on smoking behavior, are you?
A. Oh, I know a great deal about smoking behavior.
Q. Have you written any articles for a peer-reviewed publication on the topic of smoking behavior?
A. As a clinical psychiatrist, no, I haven't.
Q. Do you subscribe to any journals in the field of smoking behavior?
A. I have subscriptions -- well, I receive

articles from magazines that discuss addiction, and in those magazines are articles about nicotine addiction, yes.
Q. The question was do you subscribe to any journals in the field of smoking cessation?
A. My answer is I read articles in -- as it relates to addiction, and in those magazines will be articles particularly about nicotine addiction.
MR. WITTMANN:
Your Honor, could I ask her to answer the question. I asked if she subscribed to any journals in the field of smoking cessation.
THE COURT:
I think she answered it as best she

can, Mr. Wittmann. Go on to another question.

BY MR. WITTMANN:

Q. What journals do you subscribe to in the field of smoking behavior?

A. I read articles out of various --

Q. Again, Doctor, I don't mean to interrupt, but I didn't ask what you read. I asked you about subscriptions.

Do you know what a subscription is?

A. Yes, but that --

Q. My question is very simple. What journals do you subscribe to, if any, in the field of smoking behavior?

A. If you want to know specifically journals that I subscribe to, I don't subscribe to any particular journals as it relates to nicotine

addiction. Is that your question?

Q. Or smoking behavior?

A. Or smoking behavior.

Q. Thank you, Doctor.

A. Am I aware of smoking behavior through other articles I have read and research I have done, yes.

Q. Now, Doctor, can you name me one of the authoritative journals in the field of smoking behavior?

A. The journal -- JAMA has run several fascinating articles about nicotine addiction, and I have read those.

Q. JAMA is the Journal of the American Medical Association?

A. Yes.

Q. Okay.

A. The New England Journal of Medicine runs periodically articles as it relates to nicotine addiction, and I have read those.

Q. Okay.

A. The Annals of Psychiatry had an entire volume as it related to nicotine cravings and addiction, and I read that. That's just a few.

Q. But you have read no journals specifically devoted to nicotine addiction or cessation; correct?

A. To be honest with you, I don't know if -- I don't know how many journals there are devoted entirely to smoking behavior and addiction.

Q. Doctor, could you please refer to that same deposition at page 44.

At line 7, I asked you: Can you name the leading journals in smoking behavior

dealing with that subject; that is, the field of smoking behavior?

And your answer was: No, sir.

Do you recall having been asked that question and giving that answer?

A. Yes, at that time I didn't recall any. Yes, I remember that.

Q. All right. Now, you have never been asked to peer review any publications that were written on the topic of smoking behavior, have you?

A. No, I have not.

Q. With respect to the clinic in Morgan City,

this outpatient clinic, the substances you were treating for in that clinic primarily involved hard drugs such as cocaine, opiates, things of that sort?
A. Hard drugs, that is obviously a lay person's term. What I treated were multiple addictions. Besides nicotine addiction, alcohol addiction, cocaine addiction, and towards the end opiate addiction as well.
Q. And are these patients inpatients or outpatients?
A. All outpatient.
Q. All outpatient?
A. Uh-huh.
Q. Okay.

MR. WITTMANN:

I have no further questions, Your Honor.

THE COURT:

Any other cross on qualifications of this witness, please?

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MR. WITTMANN:

No, Your Honor.

THE COURT:

Objection to the tender?

MR. WITTMANN:

Your Honor, I would accept Dr. LeBlanc as an expert in the field of clinical psychiatry, but I would not accept her as tendered. I think she was tendered in several other different areas.

THE COURT:

The tender is as an expert in clinical psychiatry with emphasis on addiction in adults, children and adolescents.

To what part of that do you object?

MR. WITTMANN:

The last part. I accept her as an expert in clinical psychiatry.

THE COURT:

The objection is overruled. The witness will be qualified or recognized by the Court as an expert in clinical psychiatry with emphasis on addiction in adults, children and adolescents.

MR. CATES:

Thank you, Your Honor.

THE COURT:

I think it might be an appropriate time for our midafternoon recess. Fifteen minutes by the wall clock until twenty-five minutes before three.

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(In open court without a jury present:)

THE COURT:

Let the record reflect the jury has left the courtroom.

Anything for the record by plaintiffs counsel?

MR. CATES:

Nothing, Your Honor.

THE COURT:
Defense counsel, anything for the record?
MR. WITTMANN:
No, Your Honor.
THE COURT:
We will recess for fifteen minutes.
(A recess is taken at 2:20 p.m.)
-- -- --
(In open court with a jury present at 2:36 p.m.:)
THE COURT:
Please be seated.
Mr. Cates, are you ready for the direct examination?
MR. CATES:
Yes, Your Honor.
-- -- --
DIRECT EXAMINATION (Continued)
BY MR. CATES:
Q. Thank you. Dr. LeBlanc, are you familiar with the class definition in this case?
A. Yes, I am.

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Q. You have seen it?
A. I have seen the definition.
Q. Doctor, based on histories you have received from patients here in Louisiana, were many of them members of this class?
MR. WITTMANN:
Objection, Your Honor. May we approach?
THE COURT:
You may approach.
(At sidebar:)
MR. WITTMANN:
Your Honor, there is nothing in this Doctor's report about her patients or who is in the class or the class definition. She's not been identified as a person talking about that from her report.
MR. CATES:
Given the Court's limitations, we are simply trying to generalize and have her explain.
The reason this lady was hired is because she's treated class members for twenty years.
THE COURT:
I'm going to restrict her testimony to class-wide issues, the subject matter of which is contained in her report.
I recognize she didn't treat the class of Louisiana smokers who were in this case.
But if she's got opinions on

17689

addiction, if she's got opinions on the effects of nicotine that are in that report, and the subject matter is asked of her as to class-wide issues, it's an allowable question.
MR. CATES:

Judge, I will not even mention the word class representatives. I'm not going to mention Gloria Scott.

THE COURT:

I am just trying to give you some direction as to the rules so we don't have to do this with every question.

MR. SCHNEIDER:

The problem is that this report that they submitted was directed to Scott and to Jackson and was not offered as being a global witness on all these various areas --

THE COURT:

I understand that. I have considered that, and that is my conclusion. Proceed.

MR. WITTMANN:

Your Honor, it may save time if, in order to avoid running up here all afternoon, I just be allowed to say objection, Your Honor, beyond the report rather than having a bench conference.

THE COURT:

You may do that, yes, and I will rule on it.

MR. CATES:

Phil, can we agree that when you object, you won't say beyond the report, and you will understand that's what he means?

MR. WITTMANN:

Well, I may have other objections.

THE COURT:

No, he can say beyond the report.

(In open court:)

THE COURT:

The objection is overruled. Answer the question, please.

THE WITNESS:

Mr. Cates, would you repeat the question, please?

BY MR. CATES:

Q. Based on the history you received from your patients here in Louisiana, were many of them members of this class?

A. The patients I have treated in my practice meet the criteria for being members of the class, yes.

Q. Doctor, is it fair to state that you have treated members of this class for almost twenty years?

A. My experience with people that meet the criteria for the class definition, my treating goes back, those patients, over the 19 years that I've practiced here in Louisiana.

Q. Doctor, these individuals have been from different parts of the state?

A. I have treated class members in Morgan City,

in Lafayette, in La Place, in Alexandria, and in New Orleans.

Q. And these people have been of various ages?

A. Addiction crosses all sorts of lines. It cross racials lines, it crosses economic lines, sexual lines, lines of education. It affects every sector of society.

And so I have treated class members from every sector of society.

Q. Dr. LeBlanc, do the patients that you have just described in your experience have things in common as it relates to cigarette smoking and nicotine addiction?

MR. WITTMANN:

Objection, Your Honor. Beyond the scope.

THE COURT:

Overruled. Answer the question, please.

A. There are some points of commonality in class members, people who have addiction to nicotine, yes. There is some common elements.

Q. And Doctor, are there certain things that are typical or the same in those patients?

A. There are some issues that are typical that run in the class, that people in the class share in common that are typical, yes.

Q. Doctor, in preparing for your testimony today, do you understand that under the class definition in this case, the individual differences you just described, like race, like education, like employment, are not at issue in this case?

A. That's what's interesting about addiction is that despite one's sex or age or educational background, the dynamics of the disease and the treatment is the same, no matter what or who the patient is. As long as there is access to treatment.

Q. Now, Dr. LeBlanc, for purposes of your testimony in court today, I want you to consider my questions as they relate to the entire class and not to the named plaintiffs or the class representatives.

A. All right.

Q. Doctor, there has been testimony in this case that the majority of smokers begin to smoke before 18.

Do the majority of the patients you have seen over the years, without giving --

MR. WITTMANN:

Objection. I'm sorry, go ahead and finish.

BY MR. CATES:

Q. Without giving me any specifics, do the majority of your patients begin to smoke before the age 18?

MR. WITTMANN:

Objection, Your Honor. Beyond the scope.

THE COURT:

Overruled. Answer if you are able to.

A. Based on my clinical relationship with the patients, the class members, yes, the vast majority

tell me that they began smoking in their teen years, some even preteen years. And that's borne out in the research statistics as well.

Q. Thank you, Doctor.

Now, similarly there has been testimony in this case that many smokers began before the age of 15.

From your experience over the last twenty or so years, did the majority of your patients who are members of this class begin smoking before the age of 15?

MR. WITTMANN:

Objection, Your Honor. Beyond the scope.

THE COURT:

Overruled. Answer the question.

A. I wouldn't say the vast majority, but I would say probably at least 40 to 50 percent of them began smoking even before the age of 15.

Q. Doctor, have your patients typically related that they started smoking as children or adolescents?

MR. WITTMANN:

Same objection, Your Honor.

THE COURT:

Same ruling. Answer the question, if you are able to.

A. The vast majority of my patients began smoking before adulthood. I would say at least half of them began smoking even before the age of 15, and there are a significant number of people that I worked with that actually began smoking before their

teen years.

Q. Doctor, why would your patients want to try cigarettes at such a young age?

MR. WITTMANN:

Objection, Your Honor.

MR. LONG:

Objection. Speculation, beyond the scope.

THE COURT:

Overruled. Answer the question, if you are able to.

A. When you look at people who are addicted to nicotine, cigarette smokers at this point, you have to take into consideration when they actually began smoking.

And so the reasons depend on what developmental stage or age the patient is when he or she begins to smoke.

When you look at teenagers who begin smoking at that age, a lot of it has to do with the nature of adolescence.

It's a time when there is a great deal of emotional chaos going on, a lot of emotions. Do I measure up? I'm worried about how I look. I'm worried about being accepted. So there is anxiety.

A lot of times in my class members, there is dysfunction in the family. And so there is emotions of sadness for what's going on at home and maybe the fact that they are not measuring up in terms of their parents' expectations in their school.

A lot of times there is just the nature of adolescence, self-image, wanting to belong.

17695

And it's also a period of time where teenagers leave the relationship with parents that have been in place for a number of years and they venture out on their own. And so they seemingly look for those situations where they can effect their independence.

And smoking cigarettes is almost a natural for that age group. Because it has been my understanding, it was touted by tobacco as a stress manager, an anger managing vehicle, an emotions manager vehicle.

And so teenagers bought that, and for a variety of reasons, wanting to be independent, wanting to fit in with peers and older siblings that smoke, wanting to have a self-image, wanting to be part of a group and accepting the idea that this can help me handle my emotions, look cool at the same time, they began to smoke.

The dynamics for children are different. Usually when you see someone younger than teen years smoking, it's because of the influence of older siblings, it's the beginnings of an association with a peer group.

It's also a period of what we call in psychiatry initiation. They actually begin to initiate behaviors that they never did before.

And they become what we call task oriented. Once they pick up behavior, they are going to follow it through to the end. And so a lot of times you will see younger preteens smoke for that reason.

MR. SCHNEIDER:

Your Honor, objection, move to

17696

strike, outside the report.

THE COURT:

The objection is overruled. Next question, please.

BY MR. CATES:

Q. Dr. LeBlanc, in your experience, do your patients often recall any particular cigarette ads, jingles or symbols from when they were brought up?

MR. WITTMANN:

Objection, Your Honor. May we approach?

THE COURT:

You may approach.

(At sidebar:)

MR. WITTMANN:

Yes, Your Honor. I think that question goes directly to the reasons for starting or stopping smoking, which Your Honor says we can't get into.

And Mr. Cates asked about advertising which is nowhere covered in this lady's report.

MR. CATES:

May I respond?

THE COURT:

As soon as he finished.

MR. WITTMANN:

Those are my objections.
MR. CATES:
You specifically allowed going to individual knowledge of advertisements. Ads, that's all throughout both reports.

17697

I'm not asking her whether they remember --
THE COURT:
Let me suggest this to you. You have got some rules from the Supreme Court, you have got some rules from me. I know I am going to get mistrial motions. I will have to rule on them as I get them.
But you have got the Court of Appeals and the Supreme Court to think about. The rules say the subject matter of the reports, class-wide issues only. You have to know it better than I do.
And I just warn you that you are getting close to the line here.
If it's not in the report, it's off limits. I'm not going to delay ruling on every objection I get and read this report to find it.
MR. CATES:
I understand, Judge.
THE COURT:
And it would behoove you folks to be very conservative at this point, I believe.
If you think advertising is in that report, show it to me.
MR. CATES:
Judge, I'm referring to page four. Page four, the second full paragraph. I remember seeing cigarette commercials on TV that have jingles, people having

17698

conversations.
That's why I used the word jingles, Your Honor, to connect it to the report specifically. That's not even a word that I use.
MR. WITTMANN:
I think that's a reference to Ms. Scott. It's an individualized matter.
THE COURT:
The subject matter is in the report and it's a generalized class-wide question.
(In open court:)
THE COURT:
The objection is overruled.
And the question is that I want you to answer: Dr. LeBlanc, in your experience, do your patients often recall any particular cigarette ads, jingles or symbols from when they were brought up?
THE WITNESS:
Do they remember?
THE COURT:
Do you want me to read the question

back to you?
THE WITNESS:
I think I remember. I'm just trying
to recall.
A. I wouldn't say that that's something that I talk about on a regular basis with the patients that I treat.
You know, they talk about the brands of

cigarettes that they began to use when they started smoking. But in common, typically, no, that doesn't come across often in conversation.
Q. Thank you, Doctor.
Doctor, over the years, have you determined whether any of your patients have been addicted to nicotine?
A. The general --
MR. WITTMANN:
Objection, Your Honor. Beyond the
report.
THE COURT:
Overruled. Answer the question, if
you are able to.
A. In terms of the general population of patients I have treated over 19 years?
Q. Yes.
A. Yes, I have determined that the patients that primarily presented in my substance abuse work, the vast majority were cigarette smokers that were addicted to nicotine.
And even in my earlier work in terms of more general psychiatry, even with that patient population, there was a significant number of people that had nicotine addiction.
Q. Now, Dr. LeBlanc, when you say nicotine addiction, what do you mean?
A. In terms of what is nicotine addiction? It is two parts.
Number one, there is the actual product or substance, and then there is the process of being addicted to it.

The substance, drug, if you will, that we are talking about here is nicotine. It is the active ingredient in cigarettes that has been linked to the causative agent for getting people addicted to cigarettes in the first place. So they are addicted to nicotine.
And when I say addicted, I mean there is a pattern of use of this substance or drug, if you will, that becomes compulsive in nature. And even though -- and there is definite physical and mental changes that take place in the patient when they use this drug.
And even when the drug is not being used, there are physical problems that surface, such as withdrawal from the drug.
With the withdrawal, you will also get a desire to use this drug.
And even in the face of knowing that nicotine causes serious health problems, cigarette smokers, people who are addicted to nicotine, will actually continue to crave it and use it, not so much any

longer that they want the benefit, but they just don't want to be sick.

And so they will repetitively and compulsively use it. And those are some of the hallmark features of addiction.

The other crucial piece to addiction is the concept of relapse. Because people stop using the drug and start back again, that is part of addiction. That's accepted as being -- because you are addicted, you relapse, you quit, you relapse. You do that.

17701

Q. Dr. LeBlanc, are those elements the same elements you typically find in patients addicted to nicotine?

A. These elements I talked about, compulsive use, yes. That's what you see in people who are addicted, and that's what I saw over the years in the class members I evaluated and at times treated.

Q. Doctor, from your experience in treating patients, do you feel that children have the same judgment skills to make adult decisions?

MR. WITTMANN:

Objection, Your Honor. Beyond the report.

THE COURT:

Overruled. Answer the question, if you are able to.

A. Not at all. I'm sure anyone that has parented a child or taught a child or observed a child, and certainly as a physician who has treated children, no, children do not make decisions as adults make decisions, and oftentimes children are not capable of even making those decisions.

Q. Is that typical of the children that you have treated over the years who are addicted to nicotine and smoke cigarettes?

A. In general, that's true of all children that I have treated for a variety of mental problems, and it is certainly true of the children that I evaluated and treated who have become addicted to nicotine.

The decision, if you will, was not what took place when they began to smoke.

17702

Q. Dr. LeBlanc, in your experience -- or strike that.

From the histories you have taken from patients over the last 19 years, Doctor, is it fair to state that smokers and former smokers who are addicted to nicotine relapse when they try to quit smoking?

A. That's considered part of the addiction piece, that when you have an addiction, you will oftentimes quit for a variety of reasons and then find yourself back to using the drug even in the face of negative health consequences. Even in the face of it making you sick, you compulsively return to it.

Q. From your experience, Doctor, how many times do people typically relapse in trying to free themselves of nicotine addiction?

MR. LONG:

Objection, Your Honor. Cumulative.
Witness Henningfield, Cummings, et cetera.
THE COURT:
Overruled. Answer the question, if you are able to.
MR. CATES:
Thank you.

A. I can answer that question from my experience as a physician that's treated people with nicotine addiction and also from what the statistics tell us.

In my population of patients with nicotine addiction, many times you are looking at two or three, sometimes four attempts to stop smoking.

17703

And despite those attempts and some limited success, many, many, many of them return.

And even the ones that stop for a year or two, even several years, they always struggle with the cravings to pick up. And that becomes almost a lifelong struggle.

And statistics bear that out. Of the 54, 55 million people in this country who smoke, 35 million -- these are statistics that I'm repeating -- 35 million of them attempt to quit smoking every year.

Out of that 35 million, a little over a million will stop smoking for a year.

Now, we don't track those patients after a year, but statistics bear out that most patients have to go through two to three relapses before they successfully quit.

And of the 54, 55 million people who smoke, only 3 percent are considered to reach long-term success as it relates to nicotine cessation.

And that pretty much bears in terms of what I see in my population in patients.

Q. Doctor, do most of the members of this class that you have treated -- or strike that.

Have any of the members of this class that you have treated over the last 19 years indicated to you that they want to stop smoking but cannot stop smoking?

MR. WITTMANN:
Objection, Your Honor. Hearsay.
THE COURT:
Overruled. Answer the question, if you are able to.

17704

MR. CATES:
Thank you.

A. As the treating physician, if you can say 100 percent to be on the safe side, I will say well over 90 percent of the patients that I worked with who had nicotine addiction tell me that they not only want to quit smoking, but they tried on a number of occasions to quit smoking.

Some people find that difficult, not only smokers, but also people outside of the class who don't smoke or maybe even don't have addictions can't understand why people go back to the addiction.

And there is a host of reasons or dynamic

reasons why people do that. Some of it is -- some of the people have a predisposition to be more susceptible to nicotine than other people.

Some people actually manage to smoke fewer cigarettes than other people, and so what we call light smokers, if you will, those people who smoke five to ten cigarettes a day, oftentimes have it a little bit easier in terms of relapsing and are a little bit more successful in cessating.

But those people who have ongoing stressors in their lives and lack of support system and don't know that there is treatment for nicotine addiction will oftentimes relapse.

And those people who have -- those limited number of people who have been successful have had a tremendous amount of support, including treatment, to make their cessation successful.

17705

Q. What kinds of factors, Dr. LeBlanc, can cause people to relapse?

MR. WITTMANN:

Objection, Your Honor. May we approach?

THE COURT:

You may approach.

(At sidebar:)

MR. WITTMANN:

You specifically said yesterday the reasons for stopping and starting smoking are off base with the class reps.

He's asked these class reps that she's treated, what caused them to relapse. It is getting in through the back door what they can't get through the front door.

MR. CATES:

Relapse isn't starting. That's resuming.

MR. WITTMANN:

It's starting and stopping.

MR. CATES:

Judge, she specifically addresses relapse among class reps that she saw. And in an effort not to talk about them, I'm simply trying to show that that's typical.

THE COURT:

Well, I don't know the difference between the meaning of relapse and starting smoking, and I think it's a good

17706

objection. I'm going to sustain it and instruct her not to answer that question.

MR. CATES:

Thank you.

(In open court:)

THE COURT:

Sustained. Don't answer that question. Next question, please.

BY MR. CATES:

Q. Dr. LeBlanc, in your experience, are people addicted to nicotine or other drugs typically successful in cessating on their own?

A. It's been my experience with the class members that I have treated over the past 19 some odd years, no, they are not successful in stopping smoking on their own.

If you want a percentage, I could struggle to give you that. But I could say easily, easily less than 10 percent are able to walk away from cigarettes and stay -- the key here is stay away from cigarettes. Not on their own.

Q. From your experience, Doctor, have any of your patients told you that they just tried patches and couldn't stop with the use of patches only?

A. That they could stop?

Q. Could not.

A. Oh, yes. I have had many patients tell me that they have tried patches and it didn't work.

Q. And were the same --

A. Nicotine patches.

Q. Is that also true for those who tried nicotine gum and couldn't stop smoking through the

use of just nicotine gum?

A. Same thing, not successful with chewing the gum. Not successful sometimes with a combination of nicotine patches and chewing the gum.

Q. But Doctor, is it fair to state that the more help that's available, the greater the likelihood of success?

A. And that's the key for treatment. I have seen that in the programs in which I have worked and my understanding of treating nicotine addiction. You have to look at almost a menu of approaches to treating the addiction.

Not only identifying the addiction, not only educating the person to the fact that they are addicted, but also looking at the various medications, including the gum, the patch, the Zyban, if you will, and using that in combination, different milligram doses at particular times.

And also the importance of counseling. A lot of times people that have addictions because of the substances they use, their brains are actually altered, and this shows up in some neat scans that are coming through modern technology now.

MR. WITTMANN:

Objection, Your Honor. It's well beyond the scope of her report.

MR. BRUNO:

No, that's in the report.

MR. LONG:

Also cumulative. Dr. Benowitz.

THE COURT:

Overruled. Finish your answer, if

you haven't finished it.

A. As I was saying, there is actually a disturbance in -- would you repeat the question, please? It kind of broke my train of throughout.

MR. CATES:

Could you read back the question?

(The record is read back as follows:

Q. But Doctor, is it fair to state that the more help that's available, the

greater the likelihood of success?)
A. Right, because what we are finding is that there is actual changes that take place in the physical and chemical structure and function of the brain.

And so a lot of times patients with drug addictions can't process, can't benefit from motivation, can't benefit from decision-making.

And that's where counseling is so very, very important. It has to be a very supportive type counseling, it has to be a 24-7 type counseling, and it has to be counseling that focuses on behavior modification.

You can't just say: Don't pick up. You have to change the behavior. And so some of that comes with helping people cope with their stressors.

If stress keys your relapse, then you teach patients how to cope with their stress in other ways other than picking up a cigarette or picking up a drug.

If boredom is a trigger, then you teach people how to cope with their boredom in other ways other than picking up a drug, picking up nicotine.

And so the counseling is just as important as the medications, if you will, that we use. And that's why you have to have a multitude of therapies for people who are trying to recover from their addictions.

Q. And those multitude of therapies go on at the same time?

A. Oh, yes. They have to run -- and they have to be accessible.

You can't have a treatment program over here, and you have got smokers over here.

And you can't have a treatment program that people just can't afford either.

And so all of these things have to be taken into consideration. And that's why so much informal cessation work has taken place, not only in my practice, but in other practices too. Because there wasn't -- if there were programs, we trench workers didn't know about it, and so we had to pretty much do cessation over the past years in a very informal sort of way.

Q. Doctor, is it your testimony that the addiction affects the addict's decision-making?

A. The drug to which the person is addicted affects decision-making.

The new scans that are coming out are scans of people who were addicted to cocaine. However, the same scans are being used to determine that the site -- this is fascinating -- the site in the brain where cocaine works is the same site where nicotine sits and exerts its effects.

And so we are extrapolating that if you see

that in cocaine addicts, we are pretty much saying that you are going to see that in nicotine addicts.

This is new, and that technology is developing and that research is ongoing. But that's what we as clinical psychiatrists are beginning to realize, that, yes, there is a structural problem in

the brain because of the nicotine and the changes it's made, and so people can't benefit from proper decision-making like "Just don't pick up because you are going to get sick" or can't benefit from the concept of be motivated to stop smoking.

Those circuits are somehow not functioning well in the addict's brain.

Q. Those circuits and those effects are physiological?

A. What do you mean physiological, because you are a lay person?

Q. When you say in the brain, I mean, that's not something that is subjective, that's objective?

A. Oh, no, no, no. This is documented. The brain actually lights up --

MR. WITTMANN:

Objection. This is well beyond her report.

MR. LONG:

Cumulative also.

MR. CATES:

May we approach, Your Honor?

THE COURT:

Yes.

(At sidebar:)

MR. CATES:

17711

Second to the last paragraph on page six: Through the use of brain imaging, the biochemical basis for the addictive nature of nicotine has been clearly documented. As with all addicting substances -- that's what I'm asking her, can they do it on their own.

MR. WITTMANN:

The question was to ask her about the physiology of the brain.

THE COURT:

And the problem is you give her a question and she makes a speech. If she could say yes or no and give a short explanation, it would expedite this.

Because when she starts making those speeches, she runs off into left field and then to right field, and that's when you get your objections.

I'm not going to comment any further. She's answered the question adequately.

MR. CATES:

Thank you, Your Honor.

MR. LONG:

My objection for the record is this whole area of brain function is repetitive and cumulative with Dr. Benowitz.

We spent hours with him on changes in receptors in the brain, and now we are going to have to do it again on the same thing.

17712

MR. CATES:

Because she treats --

THE COURT:

I have allowed some repetition, and I'm going to allow it when your side starts, if your side gets a chance.

But it's very repetitive, Mr. Cates, and this jury is getting tired of hearing it, I guarantee you that.

MR. CATES:

Thank you, Your Honor.

(In open court:)

THE COURT:

Next question please, Mr. Cates?

MR. CATES:

I'm almost done, Dr. LeBlanc.

BY MR. CATES:

Q. Do the majority of your patients who smoke or are addicted to nicotine express a desire to quit smoking?

A. The common scenario is they will come into my office and say: You know, I have this problem and I want to quit. I know I have to quit. My health is at stake. I have got this cough or whatever. And I have tried, and I just can't. I need some help.

That's the commonality in the class, if you will, of patients that I treat.

Q. Doctor, do they typically need more than just a desire to quit?

A. Yeah, you better have more than a desire. Because these are behaviors that have been ongoing a lot of times since childhood, and there is an

addiction.

It's not a mental thing. It's actually a disease, a structural disease of the brain. And so you must have something that's going to counteract that besides just the desire to quit.

Because you are going to relapse. Even though you have all the treatment modalities, you are going to relapse.

Q. Doctor, what about concern over health consequences of long-term smoking? Do your patients typically convey that to you also?

A. It's interesting how that comes across, because a lot of my patients have different feelings about their addiction. They are confused by it, they are afraid of it, and they are saddened by it.

So they will come in and in their own sort of typical way kind of gloss over the cough I can't shake or my asthma is acting up or the doctor wants me to do a heart exam.

I mean, they will come in, and they can pretty much tell you the medical problems they are having and they made the association that this might be due to my cigarette smoking, but they just don't know what to do about it and a lot of them are afraid about it.

But when I make the referrals, like if I say to them you need to go to your doctor and tell him you need a chest x-ray or get the gum or get the patch, I can order you some Zyban, they readily receive that.

Q. And Doctor, you typically make those referrals to other physicians who do those things,

like x-rays and the other things that you just mentioned?
A. I would say more than half of the patients or the class members I treat have their own primary doctors. And so a lot of times because of insurance or because of the relationship, you know, I will send them back to the primary doctor, and he or she -- with a little note. And the primary doctor will then take over, uh-huh.
MR. CATES:
Thank you, Doctor.
Your Honor, if you will permit me to confer with counsel, that may be all we have this afternoon.
BY MR. CATES:
Q. I have got one other question.
Dr. LeBlanc, you mentioned that your patients don't typically recall specific ads or jingles or symbols; is that correct?
A. I answered that way, yes.
Q. Do your patients typically attribute their smoking cigarettes to ads?
MR. WITTMANN:
Objection, Your Honor.
MR. SHOLES:
Objection.
MR. WITTMANN:
May we approach?
THE COURT:
Approach the bench.
(At sidebar:)
MR. CATES:

The only intention of the question was for her to explain why they don't.
MR. WITTMANN:
The intention of the question -- it's repetitive to begin with.
Second, he's trying to get in through the back door the causes of starting and stopping smoking.
THE COURT:
I think that's so, and the objection is sustained.
I will tell the jury -- I will tell her not to answer the question.
(In open court:)
THE COURT:
Objection is sustained. Don't answer that question.
MR. CATES:
We tender the witness, Your Honor.
THE COURT:
Cross-examination of the witness?
MR. WITTMANN:
Yes, Your Honor.
-- -- --
CROSS-EXAMINATION
BY MR. WITTMANN:
Q. Good afternoon again, Dr. LeBlanc.
A. Good afternoon.
Q. Doctor, not all smokers are addicted or dependent on nicotine, are they?

A. In reference to the patients I have treated or patients in general?

Q. My question was not all smokers are addicted or dependent on nicotine, are they?
A. In the patient population that I have treated --
Q. No, Doctor. Can you listen to the question, please?
My question is do you agree that not all smokers are addicted or dependent on nicotine?
A. As it relates to smokers in general or the patients I have treated?
Q. The question is -- is there something you don't understand, Doctor?
A. I don't know in which area --
MR. CATES:
Obviously not. That's why she is asking.
THE COURT:
Doctor, if you are able to answer the question, you need to do so. If you don't know the answer, say you don't know.
And keep your answer relevant to the question that's asked. Understand?
A. Well, let me just answer it as relates to the class members or the patients I have treated. In terms --
Q. That's not the question I asked you, Doctor.
MR. BRUNO:
Then why don't you tell her?
MR. CATES:
Then tell her.
BY MR. WITTMANN:
Q. The question is -- would you like me to

repeat it again? Let's take it point by point.
You know what a smoker is, don't you?
A. Yes.
Q. Tell the ladies and gentlemen of the jury what's a smoker?
A. Someone who puffs and/or inhales on a cigarette.
Q. Okay, that's a good start.
And you would agree, would you not, that not all of the people who puff or inhale on a cigarette are addicted or dependent upon nicotine?
A. In general, everybody who puffs or inhales on a cigarette -- well, I don't know if I can say that.
Everybody who puffs on a cigarette is not addicted to nicotine.
Q. Okay. So we have got one group of people that puff on cigarettes that in your opinion are not addicted; is that correct?
A. Yes.
Q. Now, what about people who inhale the smoke from a cigarette?
A. I don't know if I can answer that question. I could only answer it in the realm of the patients I have worked with.
Q. Now, I take it then it's your opinion that not all smokers are addicted?

A. I think we agreed that people who puff on cigarettes in general --
Q. And you say people who puff on cigarettes are smokers?
A. Let me go back and repeat. What I said

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was --
Q. I know what you said, Doctor. My question was you said people who puff on cigarettes are smokers?
A. No. I think you asked me if people who -- if smokers were addicted to nicotine. Is that what you asked me originally? And what I said was --
Q. No. My question was not all smokers are addicted or dependent on nicotine?
A. That's what I thought you said, uh-huh.
Q. Okay.
A. And what I said was in terms of people who puff on cigarettes in general, they are not all addicted to nicotine.
You asked me then what about those in general who inhaled. And I said to you I could only answer that as related to the people that I have treated in my practice over the years. And I can answer that.
Q. Is someone who puffs on a cigarette a smoker?
A. Is someone who puffs on a cigarette a smoker? Yes.
MR. CATES:
Objection. That's been asked and answered.
THE COURT:
Overruled. Next question, please?
BY MR. WITTMANN:
Q. Doctor, let me ask you to take a look at your deposition from November 3rd, 2000, at page 173, line 12.
MR. CATES:
173.

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MR. WITTMANN:
173, line 12.
BY MR. WITTMANN:
Q. Do you have that page before you?
A. Yes.
Q. The question I asked was:
In your opinion, are all smokers addicted?
And your answer was: No. It's not believed that all smokers are addicted.
A. Right.
Q. When I asked you that question, did you give that answer?
A. Right. Well, what I did was I distinguished between those who puffed and those who inhaled.
Q. The question is did I ask that question and did you give that answer?
A. Well, you are pulling out one question out of thousands that you asked me two years ago, sir.
MR. WITTMANN:
Your Honor, may I --
THE COURT:
Doctor, the rules of the court

require if you can answer the question with a yes or no, you must do so.
If you would like to explain your answer, you may do so. But the explanation needs to be relevant to the question that was asked.
THE WITNESS:
Okay.

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THE COURT:
If you are not able to answer a question, just say I don't know the answer or I'm not able to answer the question.
THE WITNESS:
Okay. Let's start this all over again.
THE COURT:
Next question, Mr. Wittmann, please.
MR. WITTMANN:
The question I asked, Your Honor, was did I ask that question and did you give that answer?
A. Yes. When you asked me this question two years, three years ago, I gave you that answer.
Q. Thank you, Doctor.
A. Okay.
Q. I'm grateful.
Now, isn't it true, Dr. LeBlanc, that according to DSM IV, in the United States about 50 to 80 percent of individuals who currently smoke have nicotine dependence?
A. Let's talk about DSM IV. You want me to specifically address the statement in DSM IV about the 50 some odd --
Q. Yes.
A. Okay.
Q. If you can.
THE WITNESS:
I am going to answer that, but I need to qualify that, Your Honor. Is that possible.

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THE COURT:
You must answer the question if you are able to. And if you would like to explain your answer, you may do so, but the explanation needs to be relevant to the question.
THE WITNESS:
Yes, sir. Okay.
A. Repeat your question, sir.
Q. I said isn't it true according to DSM IV, in the United States about 50 to 80 percent of individuals who currently smoke have nicotine dependence?
A. I'm going to say if that's what you read out of DSM IV, then that's in there. But I'm going to qualify that and put DSM IV in perspective.
In reading the foreword in --
MR. WITTMANN:
Your Honor, I don't think that answer really requires a qualification.
THE COURT:

I think your answer was adequate.
Go on to something else. Your lawyers will have an opportunity to ask you other questions later on, if they choose to, Doctor.
Next question, please?
THE WITNESS:
Okay.
MR. WITTMANN:
Your Honor, may I call up for the Court and counsel Exhibit AN-000612?

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This is the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition. It's in evidence, Your Honor.
First of all, Doctor, do you agree that --
MR. CATES:
We have no objection, Your Honor.
MR. WITTMANN:
Pardon?
MR. CATES:
We don't have any objection.
MR. WITTMANN:
I understand, I'm just asking the question.

BY MR. WITTMANN:
Q. Do you agree that DSM IV is an authoritative treatise in the field of psychiatry?
A. I don't know what you mean by authoritative treatise.
Q. Well, what do you mean by authoritative treatise, Doctor? You tell me.
A. Well, I don't know about the term. I can't comment on that term.
Q. You are not familiar with what an authoritative treatise is in your field of practice?
A. No. But you wanted me to give my comments, my understanding of DSM IV?
Q. I just wanted to ask the question I asked you. Do you recognize DSM IV as an authoritative treatise in the field of psychiatry?
A. I don't know what you mean about when you say

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an authoritative treatise.
Q. And I ask you then if you could tell me what you mean by authoritative treatise?
A. A body with authority.
Q. Is there any such body of authority that you recognize in the field of psychiatry, Doctor?
A. Yes.
Q. What body do you recognize?
A. There are textbooks that I studied out of and been taught out of.
Q. Okay.
A. Various information that comes out of APA, AMA, National Institute on Drug Abuse. I consider those bodies of authority.
Q. Okay. So you don't consider DSM IV as an authoritative treatise in the field of psychiatry?
A. I consider DSM IV a tool that's used to educate and guide clinicians in having a common

understanding of a variety of mental disorders.
Q. Okay. And you have used that treatise in your practice yourself, have you not, Doctor?
A. I have used DSM IV in my practice.
Q. Okay. You use it on a regular basis?
A. Not now, but I have in the past, yes.
Q. Okay. And in fact, wouldn't you consider DSM IV to be the Bible in the field of psychiatry?
A. I think I was asked that question a while ago and I actually gave that answer.
But in getting some more information about DSM IV, I'm going to change that answer. Because there has been some new information that has come out that's put it in a different light.

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But I remember saying that a while ago.
Q. In fact, when I took your deposition on November 3rd, 2000 --
A. Exactly.
Q. -- I asked you if -- well, let me refer you to your deposition and not characterize what you said.
Do you still have your deposition of November 3rd, 2000, in front of you?
A. Yes.
Q. Would you please turn to page 74.
Do you have it before you?
A. Yes.
Q. Question at line two:
Okay. In your practice, Doctor, you rely on DSM IV, do you not?
Yes, sir.
Question: Do you consider that publication to be a reliable authority in the field of psychiatry?
Answer: Well, you have to understand that it's already being revised, so what comes out in terms of DSM IV or in terms of DSM V --
THE COURT:
Mr. Wittmann, the Court Reporter is not getting everything you are saying and you are reading a little faster than you should, I believe.
Slow down and start from the top again, please.
MR. WITTMANN:

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I was just trying to get to the relevant part.
Question: But it's generally regarded as the authoritative treatise by psychiatrists such as yourself, is that true?
Answer: For diagnosis, yes.
BY MR. WITTMANN:
Q. Did I ask you that question and did you give that answer on November 3rd, 2000?
A. Can I refer to that question?
THE COURT:
Just a moment, please. If you are able to answer a question with a yes or a no, you may do so.

THE WITNESS:
Okay.
THE COURT:
Mr. Wittmann, ask the question, please.
MR. WITTMANN:
I think I was on page 74. Let me back up.

BY MR. WITTMANN:

Q. The question was speaking of DSM IV:
But it's generally regarded as the authoritative treatise by psychiatrists such as yourself; isn't that true?
Answer: For diagnosis, yes.
Do you recall having been asked that question and giving that answer?

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A. Yes.
Q. Thank you, Doctor.
A. Now, can I qualify that?
Q. Did you have --
A. As it relates to what else is in the question?
Q. Is there some confusion about that answer?
A. No. I wanted to make a comment as related to the full question you asked and the full answer I gave as it related to the question you asked.
THE COURT:
Let me see that deposition, please?
THE WITNESS:
Yes, sir.
THE COURT:
Where were you, Mr. Wittmann?
MR. WITTMANN:
I was at line 16, Your Honor, on page 74.
MR. RUSS HERMAN:
That's not where he was.
MR. CATES:
May we approach, Your Honor?
THE COURT:
Yes.
(At sidebar:)
THE COURT:
Just a moment, gentlemen.
MR. CATES:
You told him to read the whole thing, and he skipped what he read. And then he gets to a point --

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THE COURT:
I was trying to find out if she had a point that the entire question and answer was not read. That's what I was trying to find out when you wanted to approach.
MR. RUSS HERMAN:
He skipped -- he pointed you not to the question that he originated that you asked him to repeat when you said he was going too fast.
MR. CATES:
I was trying to explain that.

MR. WITTMANN:
I read it once, Your Honor. The relevant question is the question I asked.
THE COURT:
Just a moment. Come here.
We are going to calm down. We are not going to get personal. We are not goes to raise our voices. We are going to be very, very professional, and I'm going to enforce that.
Mr. Wittmann, ask her a question.
I'm not going to let her make speeches. She's going to have to say yes or no. She can explain.
But no speeches that are not germane to the question, and I'm going to stop her every time she does it.
If you want to tell her that, you may tell her now. But I'm not going to let her run all over the field and make

speeches. She's been doing it, and I'm going to keep a tight rein on everybody.
Next question.
MR. RUSS HERMAN:
May I say something?
THE COURT:
You may say something.
MR. RUSS HERMAN:
Mr. Wittmann read a very, very long question and answer. You stopped him. You said, Start over, Mr. Wittmann --
THE COURT:
Yes.
MR. RUSS HERMAN:
-- and read the whole thing.
He didn't do that. He went to another question.
She is trying to say that and get back to it.
THE COURT:
You may be correct. We are going to start over again.
Mr. Wittmann, next question, please.
(In open court:)
THE COURT:
We are going to start at the top with a brand new question.
MR. CARTER:
Your Honor, may I approach?
(A discussion is held between the witness and Mr. Carter off the record.)
THE COURT:

Mr. Wittmann?
BY MR. WITTMANN:
Q. Dr. LeBlanc, at your deposition in November 2000, at page 74, I asked you the following question:
But it's generally regarded as the authoritative treatise by psychiatrists such as yourself; isn't that true?

Answer: For diagnosis, yes.
My question is did I ask you that question and did you give this answer?
A. Yes.
Q. Okay.
THE WITNESS:
Judge, can I --
THE COURT:
(Shakes head negatively.)
BY MR. WITTMANN:
Q. Now, you also in the year 2000 described DSM IV as the Bible in the field of psychiatry, did you not?
A. Yes, in 2002 I did -- I'm sorry, in the year 2000 at the deposition.
Q. Okay.
THE WITNESS:
Sir, can I qualify it?
THE COURT:
(Shakes head negatively.)
BY MR. WITTMANN:
Q. Now, to get back to the question I was going to ask you regarding DSM IV, in that Diagnostic and

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Statistical Manual, it states, does it not, that in the United States about 50 to 80 percent of individuals who currently smoke have nicotine dependence?
A. If that's what's in there, then, yes, that's what's in there.
MR. WITTMANN:
Your Honor, may I call up for Court and counsel Exhibit AN-000612, which is in evidence.
I'm sorry, it's not in evidence yet, Your Honor. But I would move to admit DSM IV in evidence at this time, Exhibit AN-000612.
MR. CATES:
No objection, Your Honor. No objection.
THE COURT:
With no objection, it will be received in evidence.
MR. WITTMANN:
Ted, would you put -- may I publish the cover page, Your Honor?
THE COURT:
You may publish it.
MR. WITTMANN:
And if we could, please, turn to page 246? And may I publish that, Your Honor?
THE COURT:
You may publish it.
MR. WITTMANN:
And if you would, Ted, under the

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paragraph entitled Prevalence, would you highlight the sentence beginning with the term "The lifetime prevalence of nicotine dependence" about the middle of the paragraph and blow that up, please?
BY MR. WITTMANN:

Q. Do you see, Doctor, it says:
The lifetime prevalence of nicotine dependence in the general population is estimated to be 20 percent. In the United States, between 50 and 80 percent of individuals who currently smoke have nicotine dependence.
A. Yes, I see that.
Q. Do you see that?
A. Yes.
Q. And lifetime prevalence of nicotine withdrawal -- I'm sorry.
MR. WITTMANN:
Go down a few lines and blow that up, if you would, and highlight it. Highlight the rest of the paragraph if you would, please.
Q. Lifetime prevalence of nicotine withdrawal among persons who smoke appears to be about 50 percent.
Do you agree with that, Doctor?
A. I don't -- I don't agree with that.
Q. Okay. Then it goes on to conclude:
Prospectively it is estimated that about 50 percent of those who quit smoking on their own and about 75 percent

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of those in treatment programs experience nicotine withdrawal when they stop smoking.
Do you agree with that?
A. I don't agree with that.
Q. Well, Doctor, would you agree that not every member of this class is addicted to or dependent on nicotine?
A. No, I don't agree with that.
Q. You don't agree with that either?
A. No.
Q. So just so I'm clear, it's your opinion that every member in this class is addicted to or dependent on nicotine?
A. My understanding of the definition of the class is that they recognize that they are addicted and are seeking treatment for that.
That's my understanding of the definition of the class.
Q. The class definition doesn't say anything about addiction, does it, Doctor?
A. Well, it says I think habit.
Q. It doesn't say habit either, does it?
A. Yes, it does.
MR. CATES:
Yes, it does.
BY MR. WITTMANN:
Q. It talks about treatment for the habit, but it doesn't say you have to have the habit to be in the class, does it?
A. If that's what you say, sir.
Q. Well, I'm here to get what you have to say,

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and I'm trying to find out if you are telling this jury that every member in this class is addicted to nicotine?

THE WITNESS:
Do I have to say yes or no?
THE COURT:
If you are able to answer the question with a yes or no, you must do so. If you would like to explain your answer after you answer it with a yes or no, you may do so, but the explanation needs to be relevant to the question.
If you don't know the answer to the question, just say I'm not able to answer the question.

A. My understanding is that the class members --
Q. That's not my question.
A. Okay.

MR. WITTMANN:
Can you read it back, please?
(The record is read back as follows:
Q. Well, I'm here to get what you have to say, and I'm trying to find out if you are telling this jury that every member in this class is addicted to nicotine?)

A. Based upon -- in my understanding, yes.
Q. I asked you for your opinion, Doctor.
A. In my opinion, addiction forms the definition -- is in the definition of the class.
Q. Let's assume -- you are a psychiatrist. Let me ask you to make this assumption.

I want you to assume that this class includes every smoker and former smoker in the state of Louisiana who began smoking prior to 1996, April of 1996, and who desires to participate in a program of medical monitoring or smoking cessation.
Assume that, if you will.
A. That's not the end of the definition, though, of the class.
Q. Doctor, I'm asking you to assume that that is the definition of the class.
A. No.

MR. RUSS HERMAN:
May I approach, Your Honor?

A. Oh, no. That's not the definition of the class.

THE COURT:
Approach the bench, gentlemen.
(At sidebar:)
MR. CATES:
Can we just put it up, Judge?
THE COURT:
I'm going to say -- I don't know why. Maybe we have been at this too long. Put it up.
MR. WITTMANN:
I'm going to, Your Honor.
THE COURT:
You tried to paraphrase it. You didn't do it verbatim, and you drew an objection. That's what went on.
Now, why are we here?
MR. WITTMANN:

I will put it up.
(In open court:)
THE COURT:
Don't answer that question, Doctor.
MR. WITTMANN:
Ted, could you publish DDA-1537, please?
Your Honor, may I publish?
THE COURT:
You may publish.

BY MR. WITTMANN:

Q. The class definition now is on your screen, Doctor. Do you see that?

A. Yes.

Q. All Louisiana residents who are or who were smokers on or before May 24, 1996, of cigarettes manufactured by the defendants, who desire to participate in a program designed to assist them in the cessation of smoking and/or to monitor the medical condition of class members to ascertain whether they may be suffering from diseases caused by, contributed to, or exacerbated by the habit of cigarette smoking, provided the class member alleges that he or she commenced smoking before September 1, 1988, or that one or more defendants actively and intentionally engaged in a course of conduct designed to undermine or eliminate compliance with or attention to warnings on cigarette packaging.

Did I read that correctly?

A. That's the class definition.

Q. All right. And it consists of all Louisiana residents, correct, who are or who were smokers on or before May 24, 1996; correct?

A. Who desire to --

Q. Well, I'm coming to the rest of it. I'm taking it piece by piece. That's the first part of it?

A. Oh, yes.

Q. We went over earlier this afternoon what you meant by smokers, and I believe you told me that you meant someone who puffed on a cigarette or inhaled a cigarette, did you not?

A. Yes.

Q. Okay. So we have got those people for the first part of it.

The second part, who desire to participate in a program designed to assist them in the cessation of smoking; correct?

A. I'm not following your line of questions, sir. I'm really not following your line of questions.

The class definition is the class definition in total. And what I'm hearing is that you want me to make comments about each segment of the definition.

And what I'm saying to you it is my understanding that the class definition is the class definition in total.

Q. And the class definition talks about diseases caused by, contributed to, or exacerbated by the

habit of cigarette smoking.
It refers -- habit refers to diseases, does it not? It doesn't refer or require that a class member have the habit?
A. I don't agree with you on that.
Q. Okay. So you and I read that definition differently, I take it?
A. As a physician, I read it differently.
Q. All right. So back to your opinion in this case. It's your opinion as you sit here this afternoon that every member in this class is addicted to or dependent upon cigarettes and nicotine; is that correct?
A. That the class definition implies addiction.
Q. And that's regardless of how little or how much they smoked?
A. Sir, addiction is not dose dependent.
Q. My question was is that your opinion regardless of how little or how much they smoked?
A. Because addiction is not dose dependent, yes, that's my opinion.
Q. So that a person, for example, who smoked a pack of cigarettes in 1960 while in high school, that person would be in the class, would he not?
A. If that person smoked on or before -- is or did smoke on or before May 24th, 1996, cigarettes manufactured by the defendants, and if that smoker desires to participate in a program designed to help him or her in the cessation -- which means they must still be smoking -- and/or to monitor the medical condition of class members to ascertain whether they may be suffering from diseases caused by,

contributed to or exacerbated by -- now, this definition says habit, I'm saying as a physician who treats addiction, it is addiction -- of cigarette smoking, provided the class member alleges that he or she commenced smoking before September 1, 1988, or that one or more defendants actively and intentionally engaged in a course of conduct designed to undermine or eliminate compliance with or attention to warnings on cigarette packaging.
For this to be germane, the person has got to be smoking.
Q. Now, you told us earlier today that cessation was an ongoing thing, and it applied to smokers and former smokers. Did I misunderstand your answer to Mr. Cates' question?
A. You need to read that question and answer back to me, please.
Q. The question I just asked you, did I misunderstand you when you were talking to Mr. Cates?
A. You may have. That's why I'm asking if you would read back the question and answer so I can know exactly what you are referring to.
Q. Do you believe that former smokers need a cessation program?
A. Yes, in some situations.
Q. So the former smoker that I described to

you --
A. I'm sorry, former smokers. Yes, in certain situations they will need, because they may be in relapse.
Q. So the former smoker that smoked a pack of

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cigarettes back in high school in 1960 would be a member of this class?
A. If that person is still smoking or at risk for relapse, yes. Particularly if they meet the criteria that they may have diseases --
Q. I'm talking about a former smoker. Listen to my question, please.
A former smoker, stopped smoking, smoked one pack of cigarettes in 1960, the person is in the class, isn't it?
A. If the former smoker is in a brief period of cessation and may have relapsed several times and has risk for relapse, and meets the other criteria of having a disease that may come as a result of the cigarettes that were made by the defendants, and because the defendants actively and intentionally engaged in a course of conduct designed to undermine or eliminate compliance with or attention to warnings on cigarette packaging --
MR. WITTMANN:
Your Honor, if you could instruct Dr. LeBlanc if she would answer my question, it would move along more quickly. Could I ask she be instructed to answer the question?
THE COURT:
The question is: A former smoker, stopped smoking, smoked one pack of cigarettes in 1960, the person is in the class, isn't it?
A. And what I'm saying is former, that person may be cessated and has relapsed back and forth,

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yes, then that person -- and meets the other criteria of the class definition, then, yes, that person is in the class.
Q. The person hasn't smoked since 1960, has not relapsed, but smoked a pack of cigarettes in 1960 --
A. Then that person wouldn't even desire to participate in a program --
Q. But that person is included in this class with this class definition; right?
A. But the class definition says: Who desires to participate in a program.
If someone hasn't smoked since 1960 and they want to participate in this program, I don't really understand that.
Q. Suppose they smoked a carton of cigarettes in 1970, are they in the class then? Haven't smoked since then.
A. The key here is the patient --
Q. Can you answer my question?
THE COURT:
Just a moment, Doctor. Remember my instructions, please. If you are able to answer a question with a yes or no, you must do so. If you wish to explain your

answer after you answer it, you may do so.

Read the question back, Mr. Reporter.

(The record is read by the Reporter as follows:

Q. Suppose they smoked a carton of cigarettes in 1970, are they in the class then? Haven't smoked since then.)

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A. If the patient meets the full criteria of the class definition, then, yes, they fit the class.
Q. If they smoked a carton of cigarettes in 1970 and not smoked since?
A. If they fit the full class definition, then, yes, they are in the class.
Q. Okay. All they have got to do is come in and say they want smoking cessation counseling; is that your opinion?
A. If they fit the full definition of the class, then, yes, they are in the class.
Q. Okay. And the full definition of the class simply asks them or has them state that they want to participate in these programs; correct?
A. In a program designed to assist them in the cessation of smoking and/or to monitor -- and I could read the entire definition.
Q. We are all pretty familiar with it by now, okay.

Now, the cessation you told us a moment ago was such that it required continuing treatment. Did I understand you correctly? Someone who has cessated still needs smoking cessation treatment?
A. Are you asking me is that possible?
Q. I'm asking you is that your opinion?
A. That someone who has cessated still needs a cessation program? Yes, that's possible.
Q. All right. Now, going back to --

MR. WITTMANN:

If I could have back up the document I had before, Ted? I think the number was AN-000612?

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And would you blow up that same area you had blown up before, please?

THE COURT:

You may publish it.

BY MR. WITTMANN:
Q. According to DSM IV, Dr. LeBlanc, the Bible, as you put it back in the year 2000, about 50 percent of current smokers have nicotine dependence; correct?
A. You are reading from here?
Q. Yes.
A. If that's what's in there.
Q. Okay. So if that's correct, then would you agree that if there are an estimated one million people in this class -- let's just take a million people to keep it easy -- and only half of them are nicotine dependent, you would have five hundred thousand people who would not be nicotine dependent?
A. I don't agree.
Q. I didn't ask you if you agree. If that's correct, if DSM IV is correct, then five hundred

thousand people who fit this class definition would not be nicotine dependent; correct?
A. You asked me if I agree. That was the first time you asked me. And my response to that question is no, I do not agree.
Now, what's the second question you are asking me?
Q. I asked you if DSM IV is correct, then up to five hundred thousand people in this class would not be nicotine dependent?
A. And my answer is DSM IV is not correct.

Q. Okay. That's not my question, though. You described DSM IV as the Bible. I'm asking you if you can accept the fact, that if you do accept the fact that DSM IV states what it says, then half a million people in this class would not be nicotine dependent. That's all I'm asking you?
A. I do not accept what DSM IV says.
Q. Okay. Let's talk about another document.
MR. WITTMANN:
May I call up Exhibit SA-4688, Your Honor? It's an article from the journal of -- from the Archives of General Psychiatry.
And call that up, Ted, for the Court and counsel and Dr. LeBlanc.
BY MR. WITTMANN:
Q. Doctor, this is an article from the Archives of General Psychiatry in the year 20001. Do you recognize that as an article published by the American Medical Association?
A. I really can't read it. The screen is so very small. Can you enlarge it?
MR. WITTMANN:
Your Honor, may I offer this in evidence as Exhibit SA-4688?
THE COURT:
Any objection?
MR. CATES:
I think it's already in evidence, Your Honor. No objection.
MR. WITTMANN:
And move to publish the first page so

the Doctor can see the first page.
THE WITNESS:
I have a copy here.
MR. WITTMANN:
You have a copy?
THE WITNESS:
Yes.
MR. WITTMANN:
May I publish, Your Honor?
THE COURT:
Yes.
MR. WITTMANN:
Highlight the title of the article, please, Ted?
BY MR. WITTMANN:
Q. This is an article dealing with Nicotine Dependence in the United States; correct, Doctor?
A. That's the title, yes.

Q. Okay. And prevalence is a term that describes how much nicotine dependence there is?
A. Yes.
MR. WITTMANN:
Would you highlight the paragraph beginning with Results, the first sentence there? The whole paragraph. That's good.
BY MR. WITTMANN:
Q. Now, this article says that:
Lifetime prevalence of nicotine dependence was 24 percent, nearly half of those who had ever smoked daily for a month or more. The highest risk --
Well, let's stop at that first sentence;

okay?
These were the results or one of the results of the study; correct?
A. That's what's printed there, yes.
Q. So they found in this study the lifetime prevalence means at any point in your lifetime you would meet the criteria for nicotine dependence?
A. That's what's written here, yes.
Q. And they found it was nearly half of daily smokers?
A. That's what's written here.
Q. So that would mean the other half of daily smokers are not nicotine dependent; correct?
A. I don't agree with this, sir.
Q. You don't agree with this article either?
A. No.
Q. Okay. Now, the study also concluded that the onset of nicotine dependence -- that is, a point in time when a smoker might meet the criteria -- usually occurred more than a year after they started smoking. Is that correct?
A. That's what's in the article, yes.
Q. Okay. So, for example, if you became a daily smoker at age 18, you wouldn't become nicotine dependent or possibly nicotine dependent until a year later at age 19?
A. If you believe this article, yes.
Q. And if you believe this article, that would mean, would it not, that not all the people in this class are nicotine dependent, are they?
A. If you accept this article.
Q. Okay. In fact, based on the findings in this

article and the findings I showed you a moment ago in DSM IV, if you believe those articles, less than half of all current and former smokers are nicotine dependent; isn't that correct?
A. If you believe this research, yes.
Q. All right. Now, Doctor, even though you diagnosed somebody as -- you can take that down, Ted -- as nicotine dependent under DSM IV, that diagnosis doesn't carry any implication as to the cause of that substance dependence, does it?
A. If you use the diagnosis of nicotine dependence, it does not speak to the causative -- no, it does not. It simply says a diagnosis.
Q. So according to DSM IV at least, a smoker could have smoked or be smoking for reasons other

than nicotine; isn't that correct?
A. I'm not sure of that.
Q. You are not?
A. No, sir.
Q. Okay. Would you agree that a diagnosis of DSM IV substance dependence means nothing about a person's ability to control their behavior?
A. I'm not sure about that either, sir.
Q. All right.
MR. WITTMANN:
Could I have, please, that prior Exhibit, Ted, AN-000612, and turn to page (xxiii).
May I publish, Your Honor, please?
THE COURT:
You may publish it.
MR. WITTMANN:

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And would you highlight the portion in the beginning with the "Moreover, the fact" -- do you see that? And blow that up, please.
BY MR. WITTMANN:
Q. It says in the DSM IV, Doctor, that:
Moreover, the fact that an individual's presentation meets the criteria for a DSM IV diagnosis does not carry any necessary implication regarding the individual's degree of control over the behaviors that may be associated with the disorder.
You agree with that, I take it, don't you?
A. That's what's written in DSM IV, yes.
Q. Do you agree with that?
A. No, sir.
Q. And the next sentence says:
Even when diminished control over one's behavior is a feature of the disorder, having the diagnosis in itself does not demonstrate that a particular individual is or was unable to control his or her behavior at a particular time.
Do you agree with that?
A. No, sir.
Q. Okay. Now, you are a former smoker, aren't you, Dr. LeBlanc?
A. Yes.
Q. You quit smoking in 1992?
A. At one time I did. That was one of several times.

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Q. And you have not smoked for over twelve years?
A. Yes, over twelve years.
Q. You have been stopped for twelve years?
A. Yes, I have not relapsed in twelve years.
Q. Okay. And are you in a cessation program?
A. Yes, I have been educated about addiction. I understand my part as being a nicotine addict.
Q. What program do you go through, Doctor?
A. These are all parts of a cessation program that I take part in informally.
Q. Where is that program?

A. It's within my own knowledge as a psychiatrist and as someone who treats addiction.
Q. Are you going -- let's use your word -- to any formal program for smoking cessation for yourself at this time?
A. Not at this time.
Q. Okay. And you have been successfully quit for twelve years?
THE COURT:
That's repetitive. Go on to the next question.
MR. WITTMANN:
Yes, Your Honor.
BY MR. WITTMANN:
Q. Isn't it true, Doctor, that the word addiction doesn't even appear in DSM IV?
A. That is true.
Q. Okay. And is that because addiction has come to be used in a common fashion by lay people?
A. That is not true.

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Q. Okay. But at least according to DSM IV, the Bible as you called it, the technical term is dependence, not addiction; isn't that correct?
A. That is not true.
Q. You don't think that's true?
A. I don't think that's true.
Q. Okay. Well, where does addiction appear in DSM IV, can you show me?
A. Addiction does not appear in DSM IV.
Q. Okay. So the technical term that DSM IV uses is dependence?
A. The technical term that DSM IV uses is dependence.
Q. All right. Now, you would agree, would you not, Doctor, that at different times there have been different definitions of both dependence and addiction?
A. Over the twelve years that I have done research, there has been different definitions of dependence and addiction.
Q. Okay. And at different times those terms have meant different things to different people?
A. At different times they have meant different things to different people.
Q. So a person could be dependent on a substance under one definition and not dependent on a substance under another definition?
A. No, I don't think that's how it goes.
Q. Well, refer back to your deposition, if you would, please, Doctor. Again, November 3rd, 2000, page 83. And I asked you a question, a series of questions starting at line eight:

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Okay. So a person could be dependent on a substance under one definition and not dependent on that substance under another definition.
Answer: You mean different definitions?
Question: Uh-huh, yes.
Indicating affirmatively.
Answer: Okay. That's possible.

Did I ask you those questions and did you give those answers at your deposition?
A. You asked me that question, and I gave you that answer.
Q. Okay. And you use those terms interchangeably yourself, do you not, Doctor?
A. At this point in time, yes, I use addiction and dependence interchangeably.
Q. Okay. And it certainly is not a fraud to say dependence instead of addiction, is it, Doctor?
A. Not at this point in time, no.
Q. Now, Doctor, the Bible, the DSM IV, requires a clinically significant impairment or distress when you are diagnosing a mental disorder, does it not?
A. According to DSM IV.
Q. What is your definition of clinically significant impairment or distress?
A. A level or problem at the level that you actually can perceive, either by what a patient reports or what you actually see on physical or mental presentation.
Q. And does each psychiatrist have his or her own definition of clinically significant impairment

or distress?
A. Some of it is subjective, most of it is objective.
Q. Do you know whether DSM IV defines that term?
A. Defines which term, sir?
Q. The term clinically significant impairment or distress?
A. I'm not aware of a definition of clinical significance, no.
Q. So it's a question of the individual professional judgment of the psychiatrist as to whether required -- whether the reported impairment or distress is significant. Is that correct?
A. No, that's not correct.
Q. That's not correct?
A. No. You have objective standards, and the clinician may be subjective in terms of rating on a scale of zero to ten.
But you have to meet the objective standards of criteria to meet a disorder.
Q. Okay. But it still gets down to a question of the individual judgment of the psychiatrist who is making the analysis of the patient, does it not?
A. No, that's incorrect.
Q. I'm incorrect on that?
A. Yes.
Q. Can you tell me, Doctor, these objective standards? Where are they?
A. It depends on which illness you are referring to.
Q. Okay. Let's talk about general substance dependence; okay?

A. You are talking about substance addiction?
Q. I'm talking about substance dependence as defined in DSM IV, Doctor.
A. Okay.
Q. Now, DSM IV has a table entitled Diagnoses Associated with Class of Substances; correct?

A. If that's what's in DSM IV, yes.
Q. Are you familiar with that table?
A. Do you want to bring it up?
Q. Yes.
MR. WITTMANN:
Can we go back to that prior exhibit and blow up page 177?
May we publish, Your Honor.
THE COURT:
You may publish it.
BY MR. WITTMANN:
Q. Are you familiar with this table, Doctor?
A. Yes.
MR. WITTMANN:
Is it possible to, Ted, if you would, blow up the top line, left hand margin. Dependence, do you see that? That whole column.
BY MR. WITTMANN:
Q. Do you see the substances we are talking about?
A. Yes.
Q. Now, this table deals with a number of different substances from alcohol all the way through caffeine, nicotine, opioids, et cetera; correct?

A. Yes.
MR. WITTMANN:
Now, go back to the full chart, if you can, and blow up the top part so you can see the classifications. Can you highlight that and blow it up?
BY MR. WITTMANN:
Q. This table takes the different substances listed on the left-hand side and classifies them as to whether they cause dependence, abuse, et cetera. Is that correct?
A. That's what's there, yes.
Q. Do you have a hard copy of that document before you, Doctor? It's a little difficult to read.
A. No. I don't have a hard copy, but I'm reading it.
Q. All right. If you can read it, that's fine.
Now, this table in DSM IV classifies nicotine differently from other substances, doesn't it?
A. That's what's in the DSM IV.
Q. And some of those differences are significant, wouldn't you agree?
A. That's what's in DSM IV.
Q. All right, I understand that. We all agree it's in DSM IV.
And nicotine is listed under dependence, but it's not listed under the abuse heading, is it?
A. That's what's in DSM IV.
Q. And it's also true, isn't it, Doctor, that every one of the twelve substances listed on this table except for nicotine and caffeine are listed in

the category of abuse?
A. That's what's in DSM IV.
Q. Okay. And if you would take a look at the

intoxication heading -- and, Ted, could you blow up under nicotine -- nicotine is the only substance listed in this table that does not cause intoxication; correct?
A. That's what's in DSM IV.
Q. So at least would you agree, Doctor, that according to DSM IV, nicotine does not cause intoxication and is not considered a drug of abuse?
A. I agree that nicotine has not demonstrated an intoxicated state. But I do not agree with the second part of that statement.
Q. So again you disagree with DSM IV?
A. I disagree with DSM IV.
Q. And if you look further at this table, Doctor, according to DSM IV, nicotine does not cause not only intoxication, but doesn't cause delirium; correct?
A. That's what's in DSM IV.
Q. Withdrawal delirium?
A. That's what's found in DSM IV.
Q. Or dementia?
A. That's what's found in DSM IV.
Q. And that's unlike withdrawal from a substance like alcohol, isn't it?
A. You will sometimes -- yeah, you can see delirium in alcohol withdrawal.
Q. So DSM IV, the Bible in your words a couple of years ago, doesn't consider nicotine to be in the same class as heroin, cocaine or alcohol, does it?

A. That's what DSM IV says.

MR. WITTMANN:
Your Honor, we are about to get into another topic.

THE COURT:
We will recess for today, and we will reconvene at 9:30 tomorrow morning. Have a nice evening.

(In open court without a jury present:)

THE COURT:
The jury has left the courtroom.
Anything for the record by plaintiffs counsel?

MR. RUSS HERMAN:
We will have redirect -- some redirect after cross. We will reserve our rights --

THE COURT:
You will have some redirect after cross?

MR. RUSS HERMAN:
Yes.

THE COURT:
Okay.

MR. RUSS HERMAN:
And we will reserve any other issues until we see how long the testimony goes tomorrow.

THE COURT:
All right.
Anything by defense counsel?

MR. LONG:
We will reserve our issues until we see how long the testimony goes.
THE COURT:
Two things I wish to bring up.
I understand that Mr. Gianna's paralegal, Ms. Shofstahl, directed a letter to Mr. Muehlberger.
Have you got that letter with regard to the list of depositions and the order in which they are going to be presented?
MR. MUEHLBERGER:
Yes, Your Honor.
THE COURT:
And are you -- I would like you to respond and give that list to Mr. Gianna or his paralegal just as soon as you are able to. You don't have to do it here in open court because I'm not going to write it down. Give it to Mr. Gianna.
MR. MUEHLBERGER:
I will, Your Honor. Thank you.
THE COURT:
I ruled with regard to the deposition of Ms. Jackson when Mr. Cates offered one page of that deposition into evidence as an exhibit, Mr. Wittmann then offered the entire deposition.
My ruling was based on a faulty recollection of what the Code of Civil Procedure said, and I am referring to Article 1450 of the Code of Civil

Procedure now.
The Code of Civil Procedure, Mr. Wittmann.
I think you are looking at the Code of Evidence, Mr. Wittmann.
MR. WITTMANN:
I am, but the Code of Civil Procedure is in there somewhere.
MR. SCHNEIDER:
I will find it.
THE COURT:
I have a volume here if you would like to have it?
MR. WITTMANN:
We have it here. We just need to find it.
THE COURT:
Michelle, 1450.
MR. WITTMANN:
I have got it right here, Judge.
THE COURT:
Article 1450, paragraph (4) reads:
If only part of the deposition is offered into evidence by a party, an adverse party may require him to introduce any other part which in fairness would be considered with the part introduced, and any party may introduce any other parts.
My recollection was that it was mandatory that I allow it. I find that is

discretionary and not mandatory.
I have reviewed the deposition, and

much of the deposition has to do with individual issues and would, therefore, be irrelevant for this portion of the case.
So I hereby reverse myself on introducing the entire deposition.
I will follow the article, and if you will designate for me, Mr. Wittmann, what other pages you would want for me to introduce, I will look at them and I will issue a ruling on those pages.
MR. WITTMANN:
Thank you, Your Honor.
I was actually looking at 1450 subparagraph (2) which says that the deposition of a party or of anyone who at the time of taking the deposition as an officer, director or managing agent, or a person designated under Article 1442 or 1448 testifying on behalf of a public or private corporation, et cetera, which is a party, may be used by an adverse party for any purpose.
And I was operating more under that than on the one that Your Honor was ruling on.
THE COURT:
Well, "used for any purpose" to me means for cross-examination, impeachment or anything else. It doesn't mandate the admissibility of the entire deposition when parts of it are violative of what the Supreme Court has said is relevant in this

phase of the trial.
MR. WITTMANN:
I will agree with that, Judge. But we do intend to offer the rest of those depositions of the class representatives when we get to our case.
THE COURT:
When I'm required to rule, I will rule.
MR. WITTMANN:
Thank you, Your Honor.
THE COURT:
We will recess until 9:30 tomorrow.
(Whereupon, the hearing adjourns at 4:20 p.m.)

REPORTER'S CERTIFICATE

I, NICHOLAS A. MARRONE, CCR, Registered Merit Reporter, do hereby certify that the foregoing proceedings were reported by me in shorthand and transcribed under my personal direction and supervision, and is a true and correct transcript, to the best of my ability and understanding.

That I am not of counsel, not related to counsel or the parties hereto, and not in any way interested in the outcome of this matter.

_____

NICHOLAS A. MARRONE (CCR 21011)
CERTIFIED COURT REPORTER
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